

# **ANALYZING THE FEASIBILITY OF THE ADMINISTRATIVE ADJUDICATION OF TRAFFIC OFFENSES VOLUME II**

Anthony K. Mason  
Thomas J. Novi

Anthony K. Mason, P.E.  
6209 Avenida Cresta  
LaJolla, California 92037

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16. Abstract  <p>This report provides information for use by local governmental analysts in conducting feasibility studies of the administrative adjudication of traffic offenses.</p> <p>The report describes experiences in other jurisdiction, and discusses issues that would normally be addressed in a benefit-cost analysis of alternative adjudicative systems for traffic offenses. These include basic arguments for administrative adjudication, legal and constitutional issues, anticipation of special interest group concerns, the monetary and nonmonetary treatment of benefits and costs, and the treatment of traffic safety issues. Methods of presentation of study findings and documentation for public information are also discussed along with tactical issues associated with planning and implementing a study. It is published in two volumes. Volume I is a 29 page Technical Summary. Volume II is the full report of 164 pages.</p> <p style="text-align: right; font-size: 1.2em; font-weight: bold;">NCJRS</p> <p style="text-align: right; font-size: 1.1em;">JAN 5 1981</p>			
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## METRIC CONVERSION FACTORS

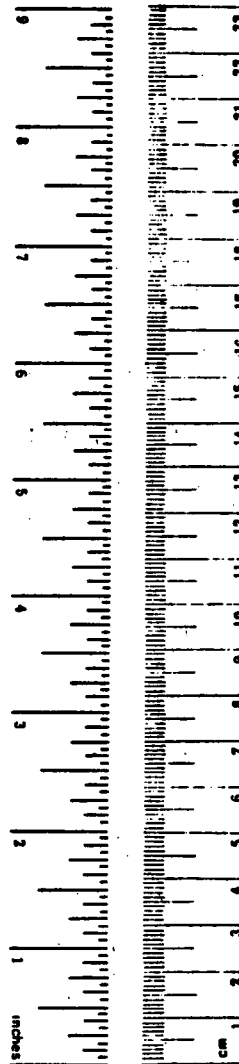
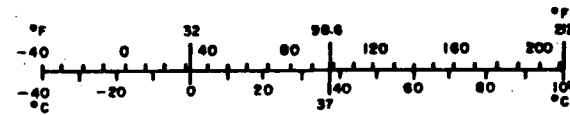
### Approximate Conversions to Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
<b>LENGTH</b>				
in	inches	2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
<b>AREA</b>				
in <sup>2</sup>	square inches	6.5	square centimeters	cm <sup>2</sup>
ft <sup>2</sup>	square feet	0.09	square meters	m <sup>2</sup>
yd <sup>2</sup>	square yards	0.8	square meters	m <sup>2</sup>
mi <sup>2</sup>	square miles	2.6	square kilometers	km <sup>2</sup>
	acres	0.4	hectares	ha
<b>MASS (weight)</b>				
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
<b>VOLUME</b>				
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cup	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft <sup>3</sup>	cubic feet	0.03	cubic meters	m <sup>3</sup>
yd <sup>3</sup>	cubic yards	0.76	cubic meters	m <sup>3</sup>
<b>TEMPERATURE (exact)</b>				
°F	Fahrenheit temperature	5/9 (after subtracting 32)	Celsius temperature	°C

\* 1 in = 2.54 (exact). For other exact conversions and more detailed tables, see NBS Mon., Publ. 286, Units of Weights and Measures, Price \$2.25, ND Catalog No. G1 110-286.

### Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
<b>LENGTH</b>				
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
<b>AREA</b>				
cm <sup>2</sup>	square centimeters	0.16	square inches	in <sup>2</sup>
m <sup>2</sup>	square meters	1.2	square yards	yd <sup>2</sup>
km <sup>2</sup>	square kilometers	0.4	square miles	mi <sup>2</sup>
ha	hectares (10,000 m <sup>2</sup> )	2.5	acres	
<b>MASS (weight)</b>				
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
<b>VOLUME</b>				
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m <sup>3</sup>	cubic meters	35	cubic feet	ft <sup>3</sup>
m <sup>3</sup>	cubic meters	1.3	cubic yards	yd <sup>3</sup>
<b>TEMPERATURE (exact)</b>				
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



## ABOUT THE AUTHORS

Anthony K. Mason, Ph.D., is President of General Analysis, Inc., a San Diego-based consulting firm. In addition to a number of years of management consulting in the courts, he served as principal consultant on economic impacts to the State of California in their feasibility study of the administrative adjudication of traffic offenses.

Thomas J. Novi is responsible for the program planning and evaluation activities of the California State Department of Motor Vehicles. He holds an M.B.A., was project manager of the California administrative adjudication feasibility study, and currently directs the research and development activities of the California Department of Motor Vehicles in administrative adjudication of traffic offenses.

## FOREWORD

The principal purpose of this document is to provide information that will aid analysts in assessing the costs and benefits of the administrative adjudication of traffic offenses in state and local jurisdictions.

Issues related to the organization, management, and presentation of findings of a feasibility study are discussed. Checklists of the types of benefits and costs that should be considered are presented along with data and examples to aid in making quantitative estimates.

In addition to identifying the principal benefits and costs to be addressed by a study, a number of other important issues are discussed. For example, there are normally front-end costs associated with the implementation of a system of administrative adjudication that are only recovered in subsequent years. For this reason, an essential concept for anyone undertaking a feasibility study is a multi-year cash flow model with an appropriate planning horizon.

The analysis of legal and constitutional implications of an administrative adjudication system normally requires specialized legal assistance. The project manager of an administrative adjudication feasibility study must closely monitor the interdependence between legal issues, system design, and economic impact analysis.

Recognizing the need for effective political leadership, diverse attitudes of special interest groups, and anticipating the type of information they will require is important in effectively conducting such a study.

Each of the above areas of concern has been addressed.

The document is organized into five chapters plus appendices. Chapter 1 presents a discussion of strengths and weaknesses of the basic arguments for administrative adjudication of traffic offenses and provides some key references which should be consulted in planning a feasibility study.

Chapter 2 describes an overall study approach and provides checklists for system design and for identification and treatment of benefits and costs.

Chapter 3 presents a brief discussion of legal and constitutional issues from the standpoint of a non-legally trained analyst whose principal concern is the identification of economic impacts.

Chapter 4 addresses special interest group issues and political problems that may be encountered in the study. Chapter 5 presents a discussion of specific benefit-cost issues such as impacts on the courts and police, and the treatment of the traffic safety aspects in a study.

The appendices contain additional material on the technical aspects of a benefit-cost analysis of administrative adjudication, formats for the illustration and presentation of findings, and other supporting information.





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## 1. INTRODUCTION

In the October, 1971, issue of Traffic Safety, Vincent L. Tofany, then Commissioner of the Department of Motor Vehicles for the State of New York, and now President of the National Safety Council, reported on the favorable first-year results of the New York Administrative Adjudication Program. In July, 1970, in New York City, the New York Department of Motor Vehicles pioneered development of what was then a new approach to handling traffic infractions.

Tofany pointed out in that article that convenience to the motoring public receiving citations, and improved efficiency in enforcement and licensing agencies were the hallmarks of the adjudication program. Except in cases of excessive speed and repeat offenders, the motorist could plead by mail or appear and have his case processed within an hour. The officer issuing the citation would be required to appear only once and only in certain cases. Due to electronic communications between the adjudication offices and the central driver record system offices, the licensing agency hearing officer could, if necessary, take immediate action against a violator's driving privilege. The procedure included safeguards for the legal rights of the motorist.

Since 1970, other jurisdictions have initiated administrative adjudication programs, and still others have taken the legal and administrative steps to decriminalize traffic offenses so they can be adjudicated administratively.

The Rhode Island administrative adjudication program, a project funded in 1974 under the National Highway Traffic Safety Administration's Special Adjudication for Enforcement (SAFE) program, currently shows many of the same benefits as those found in the New York system.

In 1975, Rhode Island led the nation with the fewest fatalities per 100 million miles driven. Edward J. Walsh, the Governor's highway safety representative, had high praise for the state's

system of administrative adjudication handled by Rhode Island's Department of Transportation. He said, in the Highway Users Federation Reporter that "... it has reduced the court caseload, permitting more time for misdemeanor cases and a higher level of enforcement of more serious traffic violations such as driving under the influence."

In 1973, NHTSA funded a modified judicial\* approach to adjudication in Seattle, Washington, also as part of their SAFE program. The Seattle project involved a unique partnership between the Seattle Municipal Court and the Washington Department of Motor Vehicles.

The results of the Rhode Island and Seattle efforts were summarized by the NHTSA in the July, 1977, Report on Administrative Adjudication of Traffic Infractions. Administrative adjudication in these jurisdictions was reported to be superior to judicial adjudication in a number of areas.

In April, 1976, at the request of the California Legislature, the California Department of Motor Vehicles, in cooperation with the Judicial Council of the State of California, the League of California Cities, and the County Supervisors Association of California, prepared a feasibility study on administrative adjudication for the State Legislature. This study found that from an overall system viewpoint, "Administrative adjudication would be economically attractive in California."

Administrative adjudication of traffic offenses will be of increasing interest to many local and state governments throughout the nation as evidence of the benefits is reported and pressures for improved state and local governmental productivity increase. However, it is unlikely that many states would commit themselves to an administrative

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\*The terms "modified judicial," "para-judicial," and "quasi-judicial" refer to systems in which an appointee of the court, who is not a judge, performs the adjudication, and the adjudication process remains directly under the administration of the court. The term "administrative adjudication" refers to a system in which the adjudication process is administered by an agency outside the judicial branch of local or state governments.

adjudication program, or even a demonstration or pilot project, without a sound evaluation of the advantages and disadvantages of such a system in terms of specific local conditions. Normally, there must be strong evidence of benefits before a decision for experimentation will be made, even though the concept is reported to be working elsewhere.

Thus, while the results from the programs conducted to date are encouraging, it is difficult to establish a compelling case for administrative adjudication in other jurisdictions without analyzing the various laws, court costs and procedures, and special interest group concerns. The magnitude of differences among states requires individual feasibility and cost-benefit studies before commitments can be made to pilot or demonstration projects.

#### 1.1 Prior Studies

The analyst responsible for assessing the attractiveness of an administrative adjudication system can draw from experiences in the State of California in their recent Administrative Adjudication Feasibility Study for the State Legislature; the work done in the SAFE projects in Seattle and Rhode Island; studies of the New York system; and extensive NHTSA research in related topical areas.

The following is a list of documents that should be consulted in planning a study. Many additional references dealing with a variety of related topical areas may be found in each.

- Report on Administrative Adjudication of Traffic Offenses, U.S. Department of Transportation, National Highway Traffic Safety Administration. These annual reports are prepared by the Secretary of Transportation as required under Section 222 of the Highway Safety Act of 1973. To date, four reports have been produced: July, 1975; July, 1976; a Supplemental 1976 Report; and July, 1977. These reports provide a synopsis of national issues and the results of NHTSA's Special Adjudication for Enforcement (SAFE) program. Copies may be obtained by writing the Publications and Forms Section (TAD-443.1), U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

- Administrative Adjudication Bureau of New York State Department of Motor Vehicles — An Exemplary Project, U.S. Department of Justice, Law Enforcement Assistance Administration. This report is part of a series of LEAA reports on outstanding programs in the courts. It provides a review of the New York administrative adjudication system. Single copies may be obtained by writing National Criminal Justice Reference Service, Washington, D.C. 20531.
- Final Report on Rhode Island SAFE Project. This report provides a detailed description of the Rhode Island system along with an analysis of benefits and costs. A copy may be obtained from the Publications and Forms Section of the U.S. Department of Transportation at the address given above.
- Final Report of the Seattle Special Adjudication for Enforcement (SAFE) Project, through December, 1976. This report provides a detailed description of the modified judicial system that was employed in Seattle along with an analysis of benefits and costs. It may also be obtained from the Publications and Forms Section of the U.S. Department of Transportation at the address given above.
- Administrative Adjudication of Traffic Offenses in California, State of California, Department of Motor Vehicles, 1976. This is a two-volume report on the potential benefits and costs of administrative adjudication in the State of California. It differs from other documentation in that it represents a feasibility study rather than an analysis of an on-going program. Volume I provides a description of the proposed system, an analysis of benefits and costs, and recommendations. Volume II presents an analysis of legal issues and material supporting the traffic safety features of the proposed system. There is also an executive summary and a technical supplement which are bound separately. Copies may be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, Virginia 22161; document accession number PB 254731.
- Arthur Young and Co., Effective Highway Safety Traffic Offense Adjudication, 1974. This report presents the results of a broad national survey on traffic offense adjudication sponsored by NHTSA. Copies may be obtained from the National Technical Information Service at the above address.
- New Trends in Advanced Traffic Adjudication Techniques, NHTSA, February, 1976. This report updates information on legal and procedural issues. Copies may be obtained from the Publications and Forms Section of the U.S. Department of Transportation at the above address.



The analyst should also be familiar with the 1973 Final Report of the Ad Hoc Task Force on Adjudication of the National Highway Safety Advisory Committee and the National Highway Safety Program Standard Number 7, entitled "Traffic Courts." These documents have been reproduced in several of the above reports, or may be obtained directly from the National Highway Traffic Safety Administration by writing to the Adjudication Branch, Traffic Safety Programs (NTS-15), NHTSA, U.S. Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590. This Branch of NHTSA will also attempt to answer questions that may arise in planning or conducting research on administrative adjudication of traffic offenses.

#### 1.2 Arguments for Administrative Adjudication

Interest in administrative adjudication by a local or state governmental entity will be based on the belief that some (if not all) of the following assertions reflect the conditions in that jurisdiction:

- (1) Administrative adjudication would promote the use of improved procedures for detecting and rehabilitating the problem driver, thereby improving traffic safety.
- (2) The cost of adjudicating traffic offenses by means of administrative adjudication would be less than by the traditional judicial method.
- (3) Administrative adjudication would assist in solving problems in the courts, such as excessive backlogs, as well as in improving the productivity of other local governmental functions such as law enforcement and prosecution.
- (4) The administrative adjudication approach would be more convenient to the public than the judicial approach.
- (5) The current practices of adjudication of traffic offenses in the courts do not enhance the public's respect for the courts.

- (6) Administrative adjudication would result in increased revenue to local governments by increased detection of multiple offenders and reduced scofflaws.
- (7) The system of administrative adjudication would improve the effectiveness and reduce the cost of state driver licensing and driver control operations.
- (8) The adjudication of traffic offenses is not perceived by judges in the jurisdiction to be a professionally rewarding activity.

Both the potential validity and the relevance of these arguments must be considered in determining which issues will be examined in a feasibility study.

The degree to which assertions such as these are true in a particular jurisdiction will be dependent on the way the courts are organized the specific procedures that are currently used for processing traffic offenses, practices and procedures used by the police, driver license control policies and procedures, and many other factors.

In addition, there are many variations in the way an administrative adjudication system can be designed. Each of these variations will, within a given jurisdiction, have different benefits and costs, and will be perceived to be either advantageous or disadvantageous by the large number of special interest groups that are involved.

It is also important to realize that all the benefits associated with administrative adjudication can, in theory, be achieved by procedural or administrative changes in the courts. In other words, there is no inherent reason why systems cannot be implemented within the courts for improving the traffic safety treatment of offenders, reducing backlog, and reducing police time in court, and so forth.

Perhaps the strongest argument for administrative adjudication is that, all other factors being equal, it will cost less to process and adjudicate a traffic offense if the system is automated, the hearing is simplified and conducted by a person who is paid less than

a judge, and the traditional trappings of a bailiff and court reporter are eliminated (see Exhibit 1-1). This argument by itself, however, is far too simplistic to justify a conversion from a judicial to an administrative system in most jurisdictions.

Since productivity and service levels can be improved in the courts, and since procedures for more effective treatment of offenders can be introduced in the courts, why should administrative adjudication be attractive? The answer is that for many jurisdictions it will be less expensive to reorganize the adjudication of traffic offenses under an administrative system than to attempt the same changes within the court system. This will be true, due to the complexities of changing longstanding judicial procedures, as well as the cost of modifying systems in the criminal courts which must serve a broad range of case processing needs. In addition, inertia and resistance to bureaucratic change must be considered.

Thus, the argument for administrative adjudication of traffic offenses, for most local governments, lies in the ease with which traffic safety, efficiency, and improved revenue objectives may be attained. It does not rest on the inherent impossibility of making changes within the courts that would achieve the same basic results.

Specifically, the interest of the National Highway Traffic Safety Administration in administrative adjudication rests on the belief that for many jurisdictions, improved treatment of traffic safety offenders may be more economically implemented through an administrative approach. It is believed that the administrative approach promotes an organizational and managerial setting which can more readily and efficiently implement the most effective driver rehabilitation systems and procedures.

A primary interest of local governments, on the other hand, will lie in increasing revenues or decreasing overall operating costs. These economic issues cannot be addressed on the basis of unit case processing costs (\$ per case processed) alone. It must be shown that after implementation the combined net costs of running the courts

EXHIBIT 1-1

Typical Manpower Requirements Based Upon A Jurisdiction  
Which Handles an Annual Caseload of 150,000  
Minor Traffic Offenses\*

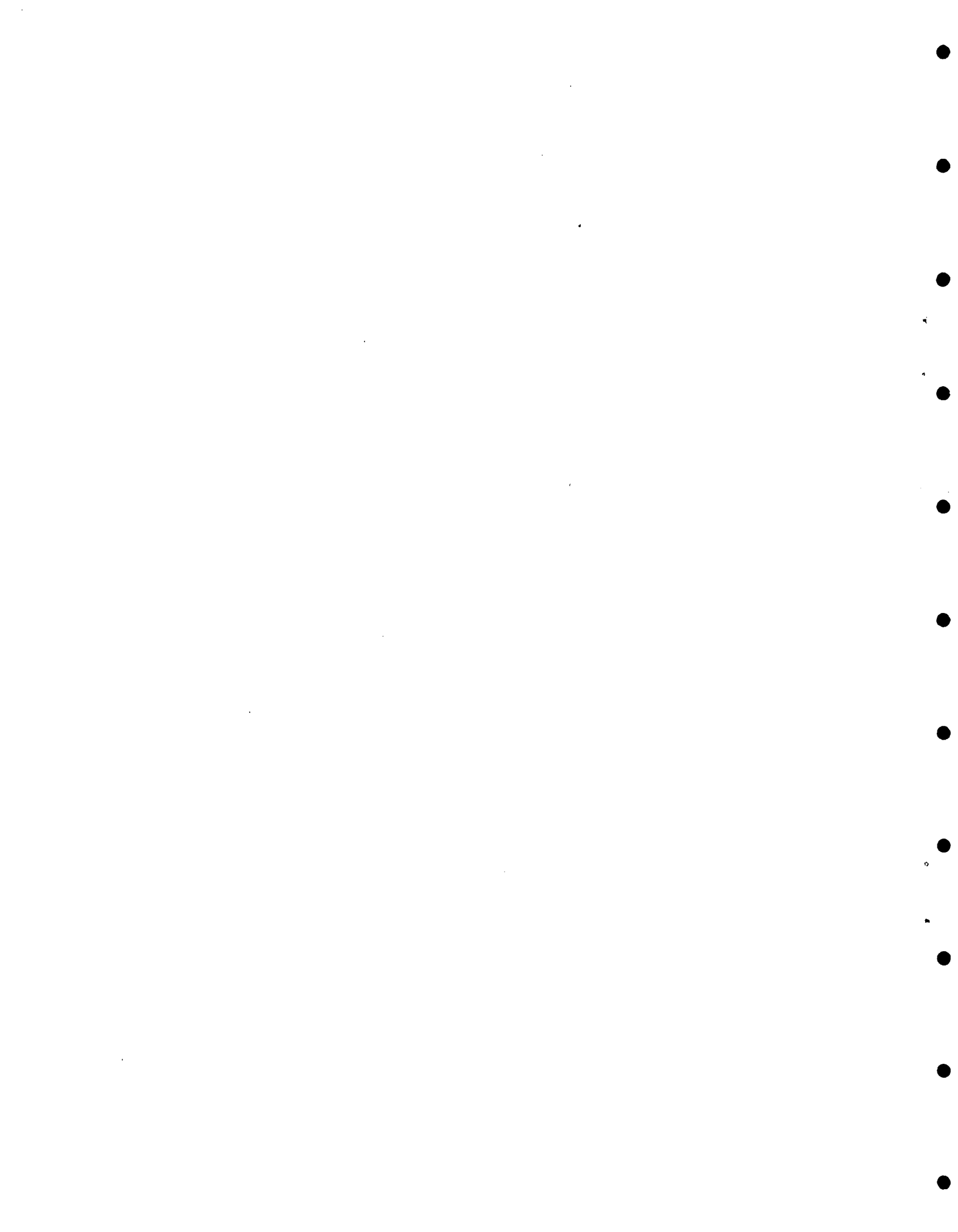
Personnel	Number	Relative Salary Level	Relative Level of Effort	Relative Cost
<b>JUDICIAL APPROACH</b>				
Presiding Judge	1	\$37,500	25%	\$ 9,375
Judge	3	37,500	100%	112,500
Court Clerk	3	10,000	100%	30,000
Bailiff	3	10,000	100%	30,000
Cashier	3	12,500	100%	37,500
Pres. Judge's Secretary	2	7,500	100%	15,000
Judge's Secretary	1	10,000	25%	2,500
	3	8,750	100%	26,500
Total Estimated Expenditure				\$263,125
<b>MODIFIED JUDICIAL APPROACH</b>				
Judge	1	\$37,500	25%	\$ 9,375
Para-Judicial	3	30,000	100%	90,000
Court Clerk	1	10,000	25%	2,500
Court Clerk	3	10,000	100%	30,000
Bailiff	1	10,000	25%	2,500
Bailiff	3	10,000	100%	30,000
Cashier	2	7,500	100%	15,000
Judge's Secretary	1	10,000	25%	2,500
Secretary	1	8,750	100%	8,750
Total Estimated Expenditure				\$190,625
<b>ADMINISTRATIVE APPROACH</b>				
Supervising Officer	1	\$25,000	100%	\$ 25,000
Hearing Officer	3	23,750	100%	71,250
Hearing Room Clerk	3	8,750	100%	26,250
Information Clerk	1	7,500	100%	7,500
Cashier	2	7,500	100%	15,000
Administrative Assistant	1	11,250	100%	11,250
Total Estimated Expenditure				\$156,250

\*Source: Effective Highway Safety Traffic Offense Adjudication, National Highway Traffic Safety Administration, June, 1974, with costs increased 25% to more accurately reflect conditions at the time of this writing.

and the administrative adjudication system is either less or, if greater, justified by other benefits.

Also, it may be insufficient to simply argue that a proposed system of administrative adjudication will be more economically attractive than the existing judicial system. The cost or feasibility of changes which achieve the same results within the existing court system must be addressed in one way or the other.

There are few, if any, jurisdictions in the nation that cannot establish some form of administrative adjudication if there is sufficient political support. The real question is not whether administrative adjudication is "feasible" but whether, all things considered, it is more attractive than the judicial approach. Thus, the problem facing the analyst is to test the hypothesis that there exists an effective form of adjudication whose implementation is financially more attractive than making equivalent changes in the existing court system and which can provide equivalent or better treatment of traffic offenders.



## 2. INITIATING A FEASIBILITY STUDY

Exhibit 2-1 illustrates some of the initial organizational and analytical steps that would normally be taken to determine the relative attractiveness of administrative adjudication in a state or local jurisdiction. These steps include the identification of impacts, alternatives for measuring impacts, and an overall approach for the study.

They include the following:

- defining the problems that exist with the current system;
- establishing the objectives of the proposed administrative adjudication system;
- identifying important system features;
- identifying special interest groups and their special information needs;
- identifying legal feasibility issues and special legal research needs;
- identifying the principal benefits and costs and how they will be treated.

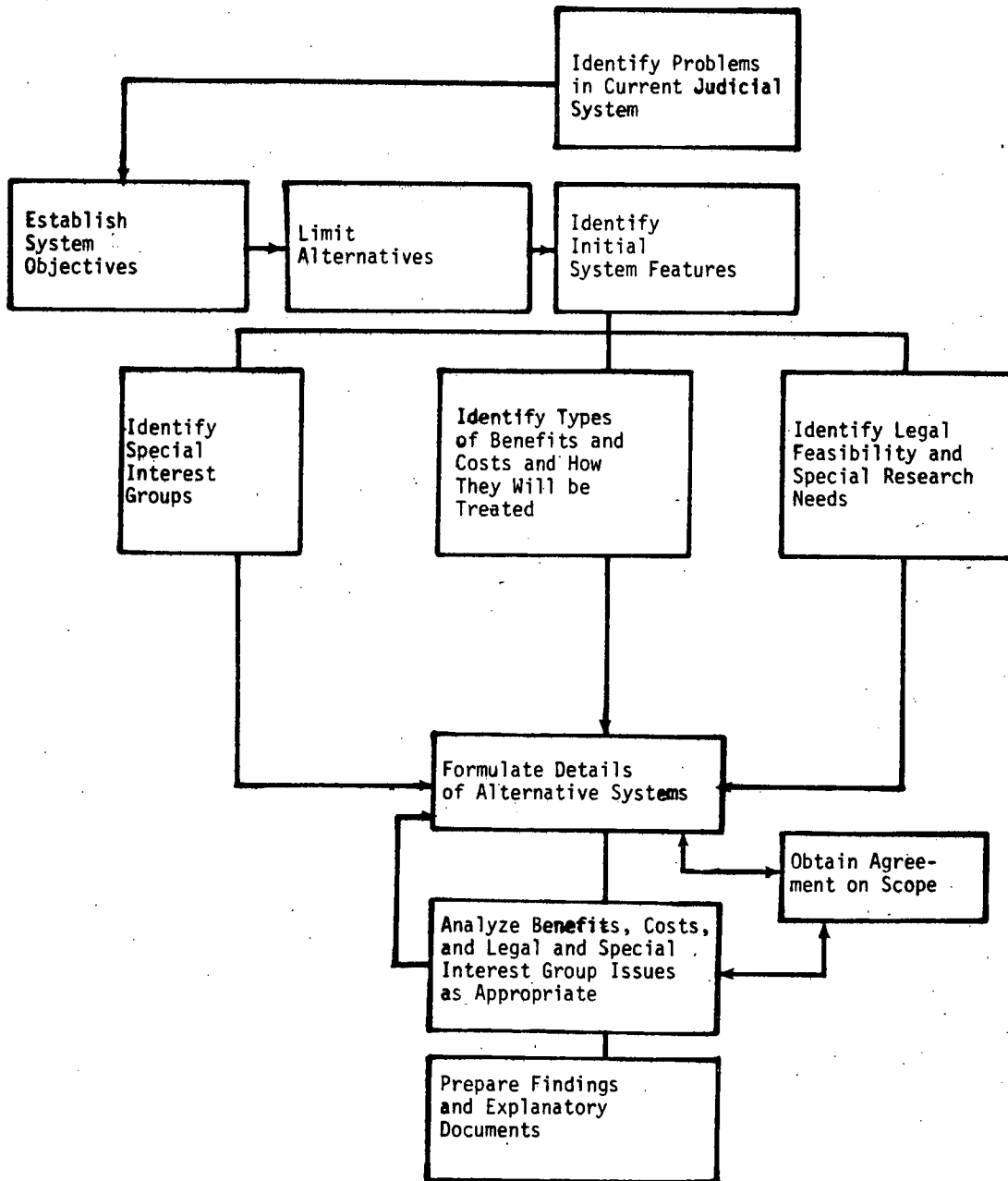
Each of these steps is discussed in this chapter and more detailed information is provided in subsequent chapters and in the appendices.

### 2.1 Assessing Existing Problems

A critical examination of the existing judicial system of adjudicating traffic offenses is an important initial step in a study of the feasibility of administrative adjudication. If it cannot be demonstrated that significant problems exist in the judicial approach, then a feasibility study of administrative adjudication may be little more than an academic exercise.

EXHIBIT 2-1

Approach to Conducting A Feasibility Study  
Of The Administrative Adjudication Of Traffic Offenses





In the case of New York, the need for change was obvious. The court system in New York City was simply unable to handle the volume of routine cases. Since the crisis was obvious to all, proposals for radical change were not strongly resisted. Major change occurred quickly and with little resistance since the alternative of an overloaded municipal court system collapsing under the weight of its traffic caseload was unacceptable. In Seattle and Rhode Island, the need was not as apparent, but strong leadership emerged to secure available federal funds which were used to develop forms of administrative adjudication.

The more typical situation is likely to parallel the California experience. Here an emerging awareness of the costs of an ever-expanding court system resulted in the Governor's office taking the lead in seeking less costly and less complex alternatives. While the concept of adjudication by administrative agencies existed in California, its application to minor traffic offenses was new and controversial in spite of New York's success.

Even though the method of financing local court systems in California had not been challenged, local urban county governments had begun to voice concern over the cost of a growing judiciary. In addition, the Governor's concern over the rapid growth of the court system had resulted in wholesale, unprecedented vetoes of legislation that would provide counties with new judgeships. Legislative initiatives to reform the court system were also being proposed.

Traffic safety was also an issue in California. Manipulation of the driver record in the courts caused the Department of Motor Vehicles to be interested in system changes that would improve its ability to monitor driving performance, rehabilitate poor drivers, and take license action against drivers with severely deteriorating records.

Overall, there was willingness to consider significant changes in the judicial system. Nevertheless, there was resistance to administrative adjudication at the legislative level in California which was due to the lack of an immediate crisis and objections from the legal community.

Given the New York and California experiences, the issue seems clear — without either a crisis in the court system or a willingness to recognize an emerging need to make major changes in the court system, an examination of the feasibility of administrative adjudication is not likely to pay dividends.

## 2.2 Establishing System Objectives

In most cases, reducing court costs or congestion in court operations and improving traffic safety would be among the principal objectives of a new system. However, other objectives as well as constraints must be considered before attempting to formulate the specific features of the system analyzed.

The checklist shown in Exhibit 2-2 has been organized into several categories. They are: (1) Traffic Safety Issues; (2) Court-Related Issues; (3) Issues Related to the Public; (4) Other Governmental Functions and Issues; (5) Fiscal Issues; and (6) Other Constraints. A checklist such as shown in Exhibit 2-2 can aid in establishing system objectives.

## 2.3 Limiting Alternatives

The essence of an administrative adjudication feasibility study is to compare the benefits and costs of the existing adjudicative system with one or more alternatives. This creates an extremely important tactical question which, unfortunately, cannot be deferred until the latter stages of the study. This question is "How many alternative system concepts should be included in the analysis?"

There are several options:

(1) Develop one "model" system which appears to be the most cost effective. In this approach, a single system concept is formulated and refined as the feasibility of implementation and knowledge of the costs and benefits become more precise through analysis. Two systems are compared — the proposed system and the existing system — along with a statement of the benefits and costs of each or a statement of the incremental benefits and costs of the proposed system only.

EXHIBIT 2-2

Checklist for System Objectives

2-5

	Primary Objective			Primary Objective	
	Yes	No		Yes	No
<u>Traffic Safety</u>			<u>For Other State and Local Government Activities</u>		
- provide for new driver improvement programs	<input type="checkbox"/>	<input type="checkbox"/>	- improve police productivity	<input type="checkbox"/>	<input type="checkbox"/>
- make current programs less costly	<input type="checkbox"/>	<input type="checkbox"/>	- improve public defender and prosecutor productivity	<input type="checkbox"/>	<input type="checkbox"/>
- make current programs more effective	<input type="checkbox"/>	<input type="checkbox"/>	- improve the efficiency of other driver control systems (driver licensing, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
- improve detection of problem drivers	<input type="checkbox"/>	<input type="checkbox"/>			
- reduce scofflaws	<input type="checkbox"/>	<input type="checkbox"/>	<u>For Local Governmental Entities</u>		
<u>Court-Related Issues</u>			- increase net revenues	<input type="checkbox"/>	<input type="checkbox"/>
- reduce or slow growth in judicial positions	<input type="checkbox"/>	<input type="checkbox"/>	- decrease expenses	<input type="checkbox"/>	<input type="checkbox"/>
- reduce or slow growth in clerical positions	<input type="checkbox"/>	<input type="checkbox"/>	<u>Overall Fiscal Constraints &amp; Objectives</u>		
- reduce backlog			- system must pay for itself	<input type="checkbox"/>	<input type="checkbox"/>
- free judge and clerical time for other work	<input type="checkbox"/>	<input type="checkbox"/>	- system must generate more net revenue than current system	<input type="checkbox"/>	<input type="checkbox"/>
- reduce time for case disposition	<input type="checkbox"/>	<input type="checkbox"/>	- no individual jurisdiction may suffer a decrease in gross (net) revenues	<input type="checkbox"/>	<input type="checkbox"/>
- improve image of court	<input type="checkbox"/>	<input type="checkbox"/>	<u>Other Constraints</u>		
- remove unliked judicial activity from court	<input type="checkbox"/>	<input type="checkbox"/>	- system must be administered in the courts	<input type="checkbox"/>	<input type="checkbox"/>
<u>For the Public</u>			- system must be administered by agency with driver licensing authority	<input type="checkbox"/>	<input type="checkbox"/>
- reduce time for case disposition	<input type="checkbox"/>	<input type="checkbox"/>	- no constitutional changes must be required	<input type="checkbox"/>	<input type="checkbox"/>
- reduce expense (time & money) in contesting cases	<input type="checkbox"/>	<input type="checkbox"/>			
- improve public view of adjudicative process	<input type="checkbox"/>	<input type="checkbox"/>			

The advantage of this approach is that it results in a concrete proposal that will provide a clear point of focus for discussion by legislative bodies and special interest groups.

The disadvantage is tactical. After the findings are presented, there will be questions of the type: "What if we made ... modification?" This type of question can be handled if the option proposed has been considered during the course of system design. If it has not, difficulties may arise. The California experience indicated that decision-making bodies are likely to raise diverse questions on the costs and benefits of various types of adjudication systems during their review of the study. This problem should be anticipated by the analyst.

(2) Develop several alternative systems, each representing a somewhat different philosophical approach. Under this option, the modified judicial approach as well as a strictly administrative approach can be compared. While this does not guarantee that questions as to the attractiveness of modifications will not be raised, it does lessen the likelihood that the final report will be inconclusive.

The disadvantage is that the analysis time and expense is increased.

There is no general answer as to which approach is best. Where the study is being performed in response to a specific legislative request, it is highly desirable to obtain interim agreement on the exact features of the systems that are being compared at the earliest possible point. Moreover, as the study progresses and insights are obtained, it is essential to confirm that the "correct" alternatives are being examined and that the benefits and costs addressed are relevant.

#### 2.4 Identifying System Features

Features of administrative adjudication systems are described in the literature in two ways. The first is in terms of broad policy guidelines for the objectives and performance of the system. These

guidelines have been developed by the National Highway Traffic Safety Administration in several publications and are noted in Section 1.1.

In addition, the State of California formulated several general models of the traffic adjudicative process in preparing their feasibility study. These models appear in Volume II of Administrative Adjudication of Traffic Offenses in California.

In other documents, system features are quite specific. These include descriptions of the SAFE projects in Rhode Island and Seattle, and the New York system. Descriptions of these systems are also available in the documents referenced in Section 1.1.

In Appendix A, there are several exhibits that show how the features of an administrative adjudication system can be displayed for purposes of designing the system and for explaining the design to special interest groups and to the public.

System features may be grouped into several categories:

1. features related to law enforcement or issuance of a citation;
2. features related to the options open to the defendant;
3. features related to case preparation and decision making;
4. features related to sanctions and reviews;
5. features related to traffic safety;
6. features related to administration and organization;
7. features related to financing and disposition of revenues.

Exhibit 2-3 provides a checklist of features that should be addressed in the initial stages of system design.

## 2.5 Identifying Benefits and Costs and How They Will be Treated

The cost of completing the feasibility study will be greatly reduced if careful consideration is given to which issues will be addressed and how inputs will be measured prior to the collection of data or other analytical work.

EXHIBIT 2-3

Initial Checklist for System Features

2-8

1. Features Relating to Law Enforcement and Citation Issuance:

- What types of offenses are covered by the system?
- What will the officer tell the motorist?
- What is written on the citation?
- Is there a provision for the motorist to obtain information by telephone?
- How are out-of-state or out-of-area offenders handled?
- What are the legal implications of stopping and citing the motorist?

2. Features Relating to Options Open to the Defendant:

- How is a hearing scheduled?
- Under what conditions will the police officer be in attendance at the hearing?
- Can the citation be paid by mail?
- Under what conditions can the defendant be represented by an attorney?
- How is appeal handled?

3. Features Relating to Case Preparation and Decision Making:

- What are the qualifications of the hearing officer?
- What sort of transcript will be prepared and how will it be retained?
- What information on the defendant's record will be made available to the hearing officer prior to a decision?
- What documentation will the hearing officer prepare?
- What discretion will the hearing officer have?

4. Features Relating to Sanctions and Reviews:

- What review procedures will be provided:

- What will be the underlying philosophy of the sanction schedule - driver improvement program assignment, maintenance of revenues, etc.?
- How rigid will the sanction schedule be?
- Who establishes the sanction schedule?
- Is the sanction schedule uniform statewide?
- How are local priorities reflected in the sanction process?

5. Features Related to Traffic Safety:

- How will the driver's prior record be used?
- What special driver improvement programs will be incorporated?
- What will be the qualifications of driver improvement personnel?
- Who will supervise, monitor, and review the operations of the driver improvement programs?
- What provisions will be made for evaluating the effectiveness and long-term costs of the driver improvement programs?

6. Features Related to Administration and Organization:

- Which agency will administer the system?
- What are the cooperating roles of other agencies?
- How will the administering agency collect monies and disperse monies?

7. Features Related to Financing and Disposition of Revenues:

- What is the source of funds for operating the system?
- Will the system guarantee no loss of revenues to local governmental units?
- Must the system pay for itself?
- Must the system be more economical than the present system?

It is important to carefully determine those benefits and costs of the system that can be quantified but not in monetary terms. These would typically include freed judge time and reduced court backlogs.

The question that must be asked is, "What is the utility of quantifying the impact versus the cost of quantifying it?" If, for example, the analytical cost of attempting to determine the monetary benefits of a reduction in case backlog is high, there is no reason for attempting to monetize the impact unless the information is crucial for the members of the decision-making body who will use the study.

Also, there may be compelling logical arguments that there will be a "substantial" reduction in clerical labor needed in the courts as a result of removing the processing of traffic citations. The utility of converting the word "substantial" to either a person-hour or dollar figure may not be sufficient to warrant the cost of analysis. Moreover, a quantitative statement may be irrelevant if dollar savings cannot actually be realized by local government.

The following are factors that may be crucial in determining whether issues should be addressed in a non-quantitative, quantitative, or monetized fashion.

- To what extent is it important that the system be financially self-supporting? If it is important, is there reliable information on the revenues and costs associated with the current judicial adjudication of traffic offenses? Can this information be disaggregated in such a way that one can associate revenues and costs with the particular offenses that will be covered by administrative adjudication?
- Are there studies or accounting records that provide a basis for determining the incremental changes in direct and indirect costs in the courts resulting from the removal of traffic offenses. If not, how can changes in these costs be estimated?
- Is more than one jurisdiction to be covered by any proposed administrative adjudication system? (Any statewide system will normally involve a number of jurisdictions.) If so, should estimates of costs and benefits be on a local jurisdiction-by-jurisdiction basis rather than for the state as a whole?

The importance of this latter point became apparent in the California feasibility study. There was compelling evidence that the proposed system was economically attractive from the standpoint of the state as a whole, i.e., the incremental benefits for all local governmental entities substantially exceeded the incremental costs. However, each local governmental entity had unique cost and revenue characteristics. It was not known how many, if any, jurisdictions would suffer a net loss in revenue due to the system. This type of problem may apply to revenues, court costs, police overtime, and almost any other factor in the analysis.

If the variance in benefits and costs between local jurisdictions is important, there are at least three ways to deal with the problem in the absence of study resources that allow an evaluation of the impact on each individual jurisdiction.

1. Test the hypothesis that all jurisdictions, even though participating unevenly in net benefits, will indeed benefit. That is, there will be no "losers" even though benefits are uneven.
2. Redesign the system through revenue or reimbursement guarantees so that there are no losers.
3. Defer the question to follow-up studies or demonstration projects prior to a commitment to a full system.

The latter approach was used in California.

One way to help organize the treatment of issues in the study is to create a checklist similar that shown in Exhibit 2-4.

In the first column, various benefits, costs, and disbenefits associated with the system to be compared are listed. The remaining columns are used to indicate how the issues will be treated.

- NOT APPLICABLE means that the issue is not relevant to the systems that are being analyzed.
- NOT TREATED means that no meaningful treatment of the issues is feasible or practical within the scope or resources of the study.



EXHIBIT 2-4

Checklist for Benefits and Costs

ISSUE	NOT APPLICABLE	NOT TREATED	NONE-TIZED	TREATED QUANTI-TATIVELY	TREATED QUALI-TATIVELY	ISSUE	NOT APPLICABLE	NOT TREATED	NONE-TIZED	TREATED QUANTI-TATIVELY	TREATED QUALI-TATIVELY
<u>Traffic Safety</u>						<u>Special Interest Group Concerns (Continued)</u>					
Number of accidents (reduction in percent of persons having accidents, mean days to accident)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public and private driver improvement organizations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Recidivism (mean days to citation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Implementation</u>					
Improved utilization of police for enforcement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Pilot program costs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>The Courts</u>						Evaluation costs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Reduction in backlog	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	System design (data processing, forms, etc., costs)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Reduction in judicial positions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Deferral in creation of judicial positions	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Labor	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Freed judge time	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Overhead, benefits, training, etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Reduction in clerical positions	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Legislative changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Deferral in creation of clerical positions	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Constitutional changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Freed clerical time	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Other Entities in System</u>					
- Attitudes of judiciary toward new system	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Police overtime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Revenues and Costs</u>						Police productivity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gross revenues	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Deferred creation of public defender positions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Net revenues (or change in net revenues) on jurisdiction-by-jurisdiction basis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Impact on the Public and the Defendant</u>					
Costs (or change in costs) on jurisdiction-by-jurisdiction basis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Time spent in adjudication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Special Interest Group Concerns</u>						Expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The judiciary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Time to Disposition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Court clerical personnel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Average or range of monetary sanctions	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The public	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Other sanctions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The traffic offender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Attitude toward adjudication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- MONETIZED means that the issue will be treated in monetary terms – dollar costs or dollar benefits.
- TREATED QUANTITATIVELY means that the issue will be treated quantitatively (time, number of scofflaws, percentage of judges preferring one system over another, etc.) but not in monetary terms.
- TREATED QUALITATIVELY means that the issue will be treated by means of logical arguments, perceptions, or in other non-quantitative ways.

Very careful consideration of the appropriate way to treat issues or the need to treat them at all will not only reduce the cost of the study but greatly improve its quality and acceptability.

The factors in Exhibit 2-4 have been checked off according to what was accomplished in the 1976 California study of the feasibility of administrative adjudication in that state. Accordingly, the checks do not indicate recommendations on how to treat issues, but are illustrative of how they were treated in one jurisdiction's feasibility study.

## 2.6 Initial Legal Issues

There are two principal constitutional issues which need to be addressed in order to demonstrate system feasibility. These issues are due process and separation of powers and they must be carefully considered in the design of the system.

The first question, due process, deals with the extent to which the administrative adjudication system affects a person's right to due process under the Constitution of the United States and the Constitution of the State in which adjudication is being considered. The answer will, in part, depend on the exact nature of the procedures used for notifying the defendant of his rights, the processing of the case, the latitude available to the adjudicator in applying sanctions, the availability for appeal to the courts, and similar issues.

The second issue, separation of powers, deals with the extent to which the system of administrative adjudication does not

conflict with the separation of powers between the executive and judicial branches of State government. For example, unless the traffic offenses to be covered by the administrative adjudication system are not criminal offenses, most jurisdictions will require some sort of legislative or constitutional changes in order to implement a system which is outside the jurisdiction of the courts and which meets separation of powers requirements. Examining this issue requires an analysis of the state constitution in terms of the specific features of the proposed system.

There is substantial literature on the subject of administrative law. A review and understanding of administrative law is relevant to any proposed system of administrative adjudication of traffic offenses. In addition, some states have adopted administrative procedure acts which will influence system design.

As a result, it is likely that legal research specialists would be required in the examination of legal feasibility. For example, the California study used the Institute for Administrative Justice of the McGeorge School of Law. Since either the feasibility or extent of legal change that must be made to implement the system is dependent on the exact procedures of the system, there must be a continuing, close communication between the legal researchers and others responsible for system design and economic analysis.

The analyst should recognize that legal considerations can affect cost in two ways. The first is by constraining system design. The second is through the expenditure of time and money to introduce constitutional or code changes necessary to implement the system.

Thus, at an early stage in the analysis, it is important to identify the constraints that may exist. Exhibit 2-5 is a checklist of legal considerations which may significantly affect benefits and costs. The analyst must seek a resolution of these items at the earliest possible point in order to minimize study costs and meet study deadlines.

## EXHIBIT 2-5

### Checklist for Initial Legal Considerations

	(Considered)
- Types of offenses that can be covered	<input type="checkbox"/>
- Time and method of advising of rights	<input type="checkbox"/>
- Representation at hearing	<input type="checkbox"/>
- Recording of proceedings	<input type="checkbox"/>
- Procedures for appeal	<input type="checkbox"/>
- Types of sanctions that can be applied	<input type="checkbox"/>
- Discretion of hearing officer in applying sanctions	<input type="checkbox"/>

#### 2.7 Identifying Special Interest Groups

While the feasibility study will be prepared for a specific governmental entity such as a state legislature, county board, or other prime user, it is likely that this entity will solicit comments from the public as well as special interest groups after completion of the study. The criteria these groups use for judging the desirability of the system may be quite different than those initially proposed by the entity requesting the study. Accordingly, it is important at the outset of the study to make a list of the persons or entities that will be affected by the system, or who may perceive they will be affected. As discussed and illustrated below, this list can be arrayed against general categories of benefits and costs to provide a matrix which has been shown to be a useful way of ensuring that the scope of the feasibility study is adequate.

The list of persons, special interest groups, and other entities that may be affected is dependent on the design of the system or system alternatives that are being investigated. Normally, the following entities should be considered:

1. the judiciary or para-judicial personnel who may currently be hearing traffic cases;
2. the clerical personnel of the court including employee representative organizations;
3. the public, as a victim of traffic accidents; as a taxpayer with interest in reduced governmental costs; as a user of the courts; and in other possible roles including that of influencer of local sanction priorities;
4. the traffic offender;
5. public and private driver improvement organizations or firms;
6. law enforcement agencies;
7. public defenders;
8. district and city attorneys;
9. state and governmental entities responsible for driver licensing and control, and registration;
10. various other entities of state and local government from the standpoint of costs and changes in revenues;
11. highway users, including organized labor, common carriers, auto clubs, and insurance industry representatives;
12. appropriate legislative bodies from the standpoint of changes in law that must be achieved to implement the system.

Other special interest groups that have expressed strong interest in administrative adjudication have included the American Civil Liberties Union, the Teamsters, and State Bar Associations.

## 2.8 Documenting the Scope of the Study

Prior to finalizing the features of the system and actually launching a detailed analysis of benefits and costs, one can array the expected impacts of the system or systems being considered against the private and public entities and special interest groups affected. This array brings together many of the considerations discussed above and is illustrated in Exhibit 2-6. Initially the array will be tentative and, as the feasibility study progresses, new impacts will be discovered and some of those initially listed may be found to be non-existent. A display which accomplishes this is illustrated in Exhibit 2-6 as a matrix structured to categorize the way the benefit or cost is measured as well as to whom it applies.

It is important to try to be as thorough as possible in the beginning, to include as many impacts as possible, and in as much detail as possible.

The following impacts were considered in the example shown:

- changes in judicial workload (various direct monetary and service-level impacts);
- changes in the clerical workload in the courts (various direct monetary and service-level impacts);
- changes in the public defender workload;
- changes in the workload of clerical support for the public defender;
- changes in scope of judicial prerogative;
- costs of designing, implementing, and running the system (system design, evaluation, training, facilities, data processing, etc.);
- changes in local control over actions, emphasis, and operation in adjudication process;
- changes in recidivism;
- changes in accident frequency/severity;

EXHIBIT 2-6

Matrix of Impacts

	THE COURTS	IMPLEMENTING ENTITY	POLICE	DEFENDANT	DRIVER CONTROL/ TRAFFIC SAFETY	HIGHWAY USERS	LOCAL GOVERNMENTS	
TO BE TREATED MONETARILY	BENEFITS	*Deferred creation of judicial positions *Freed judge time *Deferral of creation of new clerical positions		*Reduced police overtime costs		*Reduced cost of maintaining driver records		*Increased net revenues to some
	COSTS		*Facilities *Personnel (labor costs) *System design & maintenance *Indirect (training, etc.)		*Increased average fine due to detection of multiple offenders	*Costs of driver improvement programs to be implemented under proposed system	*Increased average fine due to detection of multiple offenders	*Decreased net revenues to some
TO BE TREATED QUANTITATIVELY	BENEFITS	*Elimination of unwanted duty		*Improved police productivity	*Reduced time to disposition			*Improved public defender productivity *Improved prosecutor productivity
	COSTS	*Loss of prerogative			*Increased time in driver improvement programs			
TO BE TREATED QUALITATIVELY	BENEFITS	*Reduced case backlog				*Reduction in recidivism		
	COSTS			*Reduced overtime payments			*Uncertainty of impact of new system	

- changes in time spent by the defendant in receiving a hearing;
- changes in time spent by the defendant in the entire process of clearing the citation;
- changes in the amount of the base fine schedule;
- changes in the probability of detecting multiple offenders;
- changes in the ability to execute driver license sanctions;
- changes in police regular time spent on adjudication;
- changes in prosecutor time spent on traffic cases;
- changes in prosecutor clerical support time;
- changes in the numbers of warrants for scofflaws;
- changes in the attitude of the public toward the traffic adjudication process.



### 3. LEGAL CONSIDERATIONS

The purpose of this chapter is to briefly review some of the legal issues that would typically arise in designing and evaluating an administrative adjudication system. The chapter concludes with a checklist of legal considerations for the analysts responsible for developing the model and for assembling benefit and cost information.

Not only do legal considerations constrain the design of the system, but expenditures of time and perhaps dollars to accomplish changes in law necessary to implement the system must also be considered among the costs of system implementation.

#### 3.1 Decriminalization of Traffic Offenses

The administrative adjudication of traffic offenses presupposes that these offenses are not considered criminal, in terms of the right to a jury trial or possible jail sanctions. As long as jury trials are available or jail sentences can be imposed, these offenses will necessarily fall under the jurisdiction of the criminal courts. Therefore, the first step in the implementation of administrative adjudication should be the decriminalization of those traffic offenses which are to be included in the system. Conversely, only those offenses which are decriminalized may be included.

In California, the Legislature had removed a persons right to a jury trial as well as eliminated jail as a possible sanction for those traffic offenses to be included under administrative adjudication. However, because of law enforcement agency concerns about stop and seizure resulting from a citation, traffic offenses technically remain a crime. Therefore, even though the offense would normally be processed under the administrative system, a person may elect to have the traffic offense heard in regular court.

Many states have already decriminalized minor traffic offenses, although adjudication remains under the courts in nearly

all states. Reclassification of traffic offenses and subsequent administrative adjudication has already been recommended by experts in this field. Justice Douglas, in a Supreme Court decision (Argesinger v. Hamlin, 407 U.S. 25 (1972)), stated that:

"How crimes should be classified is largely a state matter... One practical solution to the problem of minor offenses may well be to remove them from the court system."

Similarly, the American Bar Association's Special Committee on Crime Prevention and Control has concluded that:

"The handling of... non-serious offenses, such as housing codes and traffic violations, should be transferred to specialized administrative bodies."

Such a solution, it added, was within the "province of state and local legislatures."

Moreover, 40 years ago the Wickersham Commission, appointed by the President of the United States, recommended that minor traffic offenses be decriminalized and handled through administrative processes.

### 3.2 Transfer of Responsibility to Administrative Agencies

To date there have been few legislative attempts to transfer responsibility to administrative agencies. New York has instituted administrative adjudication of traffic offenses in New York City, Buffalo, and Rochester, and is considering expanding the system to other areas. Rhode Island has implemented administrative adjudication statewide with the exception of municipal violations in the cities of Providence and Pawtucket. North Dakota has a quasi-administrative system. All other states have adjudication systems which are judicial or para-judicial in nature.

For example, Seattle, Washington, operates a para-judicial system. Specially trained lawyers adjudicate infractions, counsel motorists and have jurisdiction to impose fines, suspend licenses, and require attendance at driver improvement clinics. However, administration of the adjudication process is retained by the judiciary rather than an administrative agency.

Where the purely judicial approach is employed, all court practices follow the accepted rules of criminal procedure. In a modified judicial approach, though practices differ, the essential situation is the same. Since jurisdiction remains with the court, a defendant has direct access to all rights and privileges afforded a criminal defendant. The reason an administrative approach raises legal issues is not only because it removes jurisdiction from the judicial system and vests it in an administrative agency of the executive branch of government, but because the offense must be viewed as an administrative infraction against the license, not as a criminal affair.

It should be noted that many states have already enacted administrative procedure acts, some of which have been modeled after the federal procedures act. Where these acts exist, they would influence the design of the system.

### 3.3 Issues Affecting Procedures

There are a number of legal issues that are raised by administrative adjudication of traffic offenses. Most may be classified as relating to "due process" or "separation of powers." Due process issues include the right to trial by jury, the right to appointed counsel, the standard of proof required for conviction, the nature of sanctions that might be applied, and the grounds for judicial review.

Sanctions: The objective of the sanctions used in administrative adjudication would be to improve traffic safety rather than to simply punish the offender. Administrative procedures would not allow jail as a sanction but would permit "monetary penalties" that were based on the driving record. However, if it can be shown that monetary sanctions do not affect driving behavior, their use in an administrative adjudication may be challenged.

Trial by Jury: In Baldwin v. New York, 339 U.S. 66 (1970), the Supreme Court ruled that "no offense can be deemed 'petty' for the purposes of the right to trial by jury where imprisonment for more than six months is authorized." Since incarceration normally is not

an available sanction for a traffic infraction, the lack of any provisions for trial by jury under administrative adjudication is consistent with the court's ruling.

Right to Counsel: In Argesinger v. Hamlin, 407 U.S. 25 (1972), the Supreme Court ruled that appointed counsel for an indigent misdemeanor defendant is only required in those cases where the possible sanction is greater than six months' incarceration. Thus, the New York system need not, and does not, provide appointed counsel. Moreover, the simplified hearing procedures normally associated with administrative adjudication are intended to enable motorists to represent themselves adequately without the aid of counsel.

Nature of Evidence: Administrative adjudication proceedings are civil in nature and the standard of proof in proceedings can be by "clear and convincing" evidence rather than evidence which is "beyond a reasonable doubt," the standard used in criminal cases.

The "clear and convincing" standard lies somewhere between the civil standard of "preponderance of the evidence" and the criminal standard of "beyond a reasonable doubt." The civil standard is usually defined as requiring that evidence be sufficient to make it more likely than not that the allegation is true. The criminal standard requires that proof be sufficient to remove any reasonable doubt as to the truth of the allegation.

Appeal: An administrative system must allow an aggrieved motorist the right to appeal any adverse determinations to the judicial system, thus providing the necessary checks and balances on executive authority. Grounds for such appeal can vary from the right to trial "de novo" to an appeal based only upon abuse of discretion. Provisions for intermediate administrative appeals of hearing officer determinations can also vary widely and may include review by an administrative appeals board.

Separation of Powers: There are two principal objectives of the doctrine of separation of powers. The first is fairness for the

citizen when he deals with government and the second is the diffusion of power among several branches of government so as to prevent the concentration of power in any one branch.

The first objective, fairness to the citizen, will normally be satisfied by meeting due process requirements discussed above. It is generally agreed that the second objective, diffusion of power among branches of government, will be met if the state legislature retains the power to establish guidelines for the system and the courts retain the power for review of administrative decisions. Appendix B provides additional information on separation of powers issues.

### 3.4 Impact on System Design and Evaluation

The legal and constitutional issues associated with administrative adjudication of traffic offenses may be viewed by the analyst as having several effects on the system. First, they constrain the way the system may be designed. Second, they dictate the detailed procedures that must be incorporated in the system which in turn have certain operating costs. Third, changes in law necessary to implement the system may require considerable time and expense to execute. In each case, there are costs which should be taken into account in the analysis.

The following is a brief checklist of issues that should be considered by the analyst or project manager at an earlier stage in the study. Some would undoubtedly be the subject of an in-depth legal study.

- the types of offenses that can be included in the system;
- the implications of the state "administrative procedures act," if any;
- due process issues including:
  - right to appointed counsel
  - the standard of proof ("preponderance of evidence" vs. "clear and convincing evidence" vs. "beyond reasonable doubt")
  - grounds for intermediate administrative appeal
  - grounds for judicial review

- separation of power issues including:
  - who establishes the sanctions
  - the types of sanctions to be applied
- impacts on law enforcement procedures:
  - search and seizure
  - arrest.

#### 4. ANTICIPATING THE INFORMATION NEEDS AND ARGUMENTS OF SPECIAL INTEREST GROUPS

Normally, when a jurisdiction considers administrative adjudication of traffic offenses, serious concerns exist with the more traditional forms of judicial adjudication. Unlike the incremental type of change which has resulted in modified forms of judicial adjudication, e.g., attorneys acting as hearing officers in a judicial setting, administrative adjudication presents a major and significant change in the way traffic infractions are handled.

As a result, decision makers at the local and state levels are not likely to be receptive to change unless strong and compelling reasons are given for the need for change, questions raised by special interest groups are answered, and the study findings, conclusions, and recommendations are perceived as being objective and complete.

The experiences in New York, Rhode Island, Seattle, and California all point to the requirement of strong political leadership if problems with an existing adjudication system are to be resolved. It can be argued quite convincingly that the lack of strong and effective political leadership will result in limited, if any, change occurring.

An examination of developments in California will help the analyst put this issue in perspective. Divergent interests at one point seriously threatened the proposed administrative adjudication legislation. The Governor's office then asserted political leadership by using administrative adjudication as an example of the broad need for court reform. J. Anthony Kline, Governor Brown's legal affairs secretary, on February 12, 1978, commented publicly in the Los Angeles Times on the general frustration he experienced in trying to make significant improvements in the California judicial system:

"... during the past two years the governor has offered a series of legislative measures designed to achieve four goals:

- the reorganization of the trial courts;
- the simplification of the judicial process;
- the removal from the courts of certain types of disputes which can be more fairly and efficiently resolved elsewhere;
- and the expansion of arbitration and conciliation as alternatives to litigation.

Attaining these goals has proven far more difficult than the casual observer might suppose. For example, although there is broad consensus on the necessity of court reorganization, this reform has been stymied by a strong disagreement among trial judges themselves.

But it is the lawyers of this state, not the judges, who have most aggressively frustrated efforts to secure progressive reform. Indeed, one striking example of the bar's obstinance involves the handling of traffic infractions. In 1976, after lengthy study, the Department of Motor Vehicles proposed that the disposition of petty traffic violations be taken out of the municipal courts and placed in the hands of independent administrative hearing officers.

Such a step, which has been adopted by a number of other states, would not only save an estimated \$13 million per year, but would also create a more humane, accessible, and expeditious system of dealing with such cases. It would also relieve the courts of the huge volume of routine traffic matters that in some areas occupy almost 20% of the municipal judges' time.

A. Alan Post, then California's legislative analyst, conducted a companion study which reached the same conclusions as the DMV's analysis and endorsed the plan. The legislation drafted by the DMV modestly proposed a five-year pilot study limited to three contiguous counties - Sacramento, Placer, and Yolo.

Although the measure had the support of the three county governments involved, the Trial Lawyers Association opposed the bill and successfully bottled it up in committee. The lawyers argued that passage of the bill would have undermined the right to have one's day in court. However, anyone who has ever spent a day in traffic court in any metropolitan county must wonder why this "right" deserves to be preserved.

What this example illustrates, I think, is that the public interest in resolving civil disputes justly



and with dispatch — outside the courtroom if possible — is increasingly viewed by the legal profession as a threat to its own special interest in generating business. This interest, of course, depends upon conflict or the threat of conflict, and the more sustained the better. "

#### 4.1 Information Needs of Special Interest Groups

In dealing with the concerns of special interest groups, a number of factors should be considered. First, the mandate for examining the feasibility of administrative adjudication should be as broadly based as possible. In California, this took the form of legislative resolution, while in New York, a "blue ribbon" commission was appointed. Strong leadership also existed in the cases of Seattle and Rhode Island.

Second, the input of all affected interest groups should be sought early in the design and analysis process. Obtaining this input may be aided by the use of an advisory committee (made up of representatives from the various interest groups) or by requesting a critical review of drafts of the study by the interest groups. Both the value of the study and chances for implementation will be enhanced if their concerns can be recognized, analyzed, and responded to in the feasibility study.

Both the use of a broadly-based advisory committee and the dissemination of study drafts were part of the California feasibility study. As a result, the types of economic impacts analyzed were expanded, certain legal implications were emphasized in research, and public opinion survey instruments were modified.

Recommendations, as well as the content of the final report that emerged from the California study, were based in large part on the issues which were raised by special interest groups.

The following questions were raised by groups affected by, or interested in, the proposed changes in California. To varying degrees, it may be expected that similar questions would be raised during

an examination of administrative adjudications in other jurisdictions. These types of questions should be anticipated, and responded to, in the feasibility study.

- What information exists that demonstrates the need for a major change in traffic infraction adjudication?
- What is the likelihood that the proposed change will be found to be fully constitutional?
- Why should the judgment of locally elected judges be replaced by civil service hearing officers?
- What form of appeal would be available?
- What would be the traffic safety implications?
- Would a new bureaucracy be created? What should its relationship be to law enforcement and driver licensing agencies?
- How would the proposed system be administered? How would it be operationally organized?
- Should the changes be statewide or limited to urban areas?
- How would the change be managed to insure minimum disruption?
- How would court staff reductions be accomplished with minimal impact on employees?
- How would the proposed system be funded? Would revenues to any governmental agency change as a result of the new system?
- What would be the impact on commercial drivers?
- What would the qualifications of hearing officers be? Lawyers or only legally trained?

#### 4.2 Acceptability of Study Findings

The apparent objectivity of the study must be established if findings are to be accepted.

It can be reasonably argued that an objective examination of issues requires that the study be conducted by a group independent of any agency that would have a self-interest in its outcome.

In California, staff and consultants to the State Department of Motor Vehicles conducted the study. The face validity of findings and recommendations would have been significantly enhanced if it had been conducted by an independent study group reporting to an advisory committee made up of representatives of the various interest groups.

The acceptability of the study is also related to the degree to which a permanent commitment to change is recommended. Assumptions made throughout the analysis create substantial uncertainty as to the extent of benefits and costs.

Assuming that findings show change is attractive, recommendations may range from total implementation to a pilot study. The advantage of the pilot study is that it allows estimated benefits and costs to be validated. It also enhances orderly implementation of the proposed system by testing systems and procedures. The disadvantage of a pilot study would be lost benefits associated with deferred system implementation. Experiences in New York and California indicate that a pilot study or limited initial implementation would probably be more acceptable to decision makers and special interest groups.

#### 4.3 Special Interest Group Concerns

Groups and organizations directly affected by a change from judicial to administrative adjudication include the judiciary, attorneys, highway carriers, commercial drivers, the driver licensing agency, and law enforcement. Major issues these groups may be expected to focus upon are summarized below:

## Judiciary

Persons within the court system are likely to have mixed feelings concerning administrative adjudication. Some judges perceive minor traffic case processing and adjudication as burdensome and unrewarding; others feel that traffic cases should be dealt with only in the judicial system. Experiences in California and New York indicate that courts in urban areas would support removal of minor traffic cases from the judiciary, while rural courts would be inclined to retain them.

The views of rural courts result from several factors. First, rural courts do not tend to be overloaded, and many rural judges function in a part-time capacity. Second, rural courts tend to have a much closer relationship with the people served; a judge in a rural area tends to be well-known in the community while an urban court judge is normally not personally known to defendants.

The impact on court personnel, as a result of the removal of minor traffic cases from a judicial setting, is a key issue that judges, court administrators, and chief clerks are likely to focus upon.

Will clerical staff be reduced? Will judicial positions be reduced? Without strategies that neutralize these concerns, it can be expected that the judiciary would be opposed to administrative adjudication.

A similar problem may be found in large courts that have recently established elaborate data processing systems for case processing. In many of these systems, the workload component which justified the system was traffic related, even though non-traffic criminal and civil matters are carried by the system. If processing of traffic cases is removed from the courts, there may be apprehension over the fate of the data processing system and the people who operate it.

## Attorneys

Attorneys are likely to be concerned with the qualifications of hearing officers. One of the attractive features of administrative adjudication is the possibility of using legally trained

non-attorney hearing officers who would be paid less than attorneys. The adjudication of minor traffic cases does not require the full range of attorney skills and knowledges. Attorney groups may be expected to resist this change since non-attorneys would be allowed to compete for hearing officer positions, and the salary levels would be substantially lower than an administrative law judge or municipal judge could be expected to earn. In California, this issue generated a great deal of controversy among attorneys and non-attorneys, even though some attorneys saw value in allowing non-attorneys to compete for hearing officer positions. Various legal groups opposed the non-attorney option but the Governor supported it. If debate in California is an indication of future trends, there may be increasing sentiment for legally trained non-attorneys.

#### Highway Carriers

Generally, highway carriers may be expected to support the concept of administrative adjudication since the objectives of court reform and improved traffic safety are consistent with their own interests.

Highway carriers' interest is also likely to focus on service features such as paying tickets by mail. In addition, carriers would support features which improved traffic safety. Overall, commercial carriers would probably support most administrative adjudication systems.

#### Commercial Drivers

Commercial drivers are those who drive for compensation, such as truck drivers or taxi operators. Commercial driver representatives, such as the Teamsters Union, may not support the concept of administrative adjudication unless the existing judicial system was viewed as grossly unfair or unreasonable.

While commercial drivers could be expected to support the concept of a more convenient method of paying citations coupled with

the potential of improved traffic safety, potential disbenefits are likely to cause concern. These include the perception that non-elected hearing officers may be unreasonably severe in adjudicating infractions and applying sanctions. Elected judges, on the other hand, may be viewed as being more sympathetic to commercial drivers, since convictions may have a direct effect on the driver's employment.

The elimination of systems which permit the clearing of driving records may be opposed by commercial drivers as well as others who are aware of methods used to manipulate traditional driving record systems. In Los Angeles, for example, the Teamsters Union operates a traffic court school program oriented to the commercial driver. Frequently judges will allow a cited driver to participate in the program, with satisfactory completion resulting in a dismissal of the citation. This produces a driver record that is artificially clear of convictions.

#### Driver Licensing Agency

The state driver licensing agency may be expected to support the concept of administrative adjudication since it would enhance the total system of driver licensing, adjudicating infractions against the license, driver improvement, and control of the driving privilege. One economic benefit of administrative adjudication is obtained by tying the adjudication and driver improvement elements together in one hearing. The Rhode Island and California systems combine a driver improvement session with the hearings. In Seattle, a court hearing officer refers the offender to a state driver improvement analyst located in an adjoining room. New York, however, schedules separate driver improvement hearings.

#### Law Enforcement

Law enforcement groups tend to be conservative when faced with change. As a result, it should not be surprising to find law enforcement skeptical, or even opposed to changes, in the traffic enforcement/adjudication system. Their concerns are likely to focus on the public's image of law enforcement, as well as potential reductions of the peace officer's legal authority.

Image concerns relate to moving the adjudication from the "majesty of the courts" to a less formal administrative setting. The concern of law enforcement is that the offense may be down-graded in the eyes of the public, which may then have an effect on traffic safety as well as on the peace officer's image. The experiences in New York and Rhode Island indicate, however, that no adverse impact to law enforcement's image would occur; nor is there any evidence that the public's view of traffic violations would be adversely affected.

There will probably also be concern with the peace officer's authority in the areas of arrest and search and seizure, particularly if total decriminalization of traffic infractions is considered. In California, this area of concern was dealt with by the Legislature's Senate Judiciary Committee which directed that independent legal analyses of these issues be conducted by the McGeorge School of Law and the Legislative Council. Both analyses concluded that administrative adjudication would not affect law enforcement's authority.





## 5. ANALYZING BENEFITS AND COSTS

This chapter presents information on certain benefits and costs that would typically arise in a feasibility study on administrative adjudication of traffic offenses.

The principal findings from those jurisdictions that have either operated on administrative adjudication systems or have conducted feasibility studies are also summarized.

Some general points to be kept in mind in designing the study include the following:

- While a reduction in staff in the courts, police, or other local governmental entities may be theoretically justified by the introduction of administrative adjudication, it may be unlikely that any actual reduction in staff will occur. For example, removing 20% of the workload in a court system is unlikely to result in any judicial positions being eliminated. Accordingly, realizable dollar benefits may result only from a deferral of the creation of new positions. This means that benefits must be analyzed over a period of years in the future.
- While actual positions in existing local governmental entities may be unchanged after the introduction of administrative adjudication, it may be effectively argued that there will be freed time that may be spent on other activities such as backlog reduction. This time has an economic value to the community which can be claimed as a benefit. However, it cannot result in reduced expenditures unless the expenditures were previously planned.
- The incremental savings through removal of some fraction of an entity's workload is difficult to estimate due to subtle administrative and supervisory implications. For example, there may be no way to realize savings associated with eliminating 30% of the work of the one cashier in a small court. The approach to estimating incremental costs and benefits should be carefully considered.

- To date, there is little empirical evidence relating the form of adjudication to recidivism. Accordingly, the analyst must formulate arguments that the administrative adjudication system will provide improved treatment of traffic offenders if traffic safety is to be claimed as a benefit.
- Stating benefits in terms of unit case-processing costs (\$ per case) may be useful but alone may not be persuasive to local governmental officials. The problem is that even though unit case processing costs are reduced, overall expenditures may be higher because a new function has been added and none of the costs of the old functions have changed.

### 5.1 The Courts

The principal considerations that may arise in connection with the courts are as follows:

- reduction in judicial positions;
- deferral in creation of judicial positions;
- freed judge time (as opposed to reduced or deferred positions);
- reduction in supporting clerical positions;
- deferral in creation of new clerical positions;
- freed clerical time (as opposed to reduced or deferred positions);
- reduction of backlog and case processing delay as a result of freed judge and clerical time;
- attitudes of the judiciary toward the loss of what is perceived as either a desired prerogative or undesired function;

For the first six of these items, the analyst has the alternatives of attempting to make monetary statements as to the degree of the impact, of making quantitative statements without converting them to monetary terms, or of making qualitative assertions.

In the case of backlog reduction, expressing the impact in monetary terms may be difficult because of problems in assigning credible monetary values to delay in case processing.

In the case of attitudes of the judiciary toward a loss of prerogative or a loss of disliked functions, quantitative statements may be achieved by means of surveys.

Impact of Judicial Positions and Freed Time: The chart on the following page illustrates a model of the impact of the introduction of an administrative adjudication system on the number of judicial positions. The chart shows the number of judges as a function of time.

Tracing through the graph will clarify the behavior of the model as well as the method of calculating the impacts.

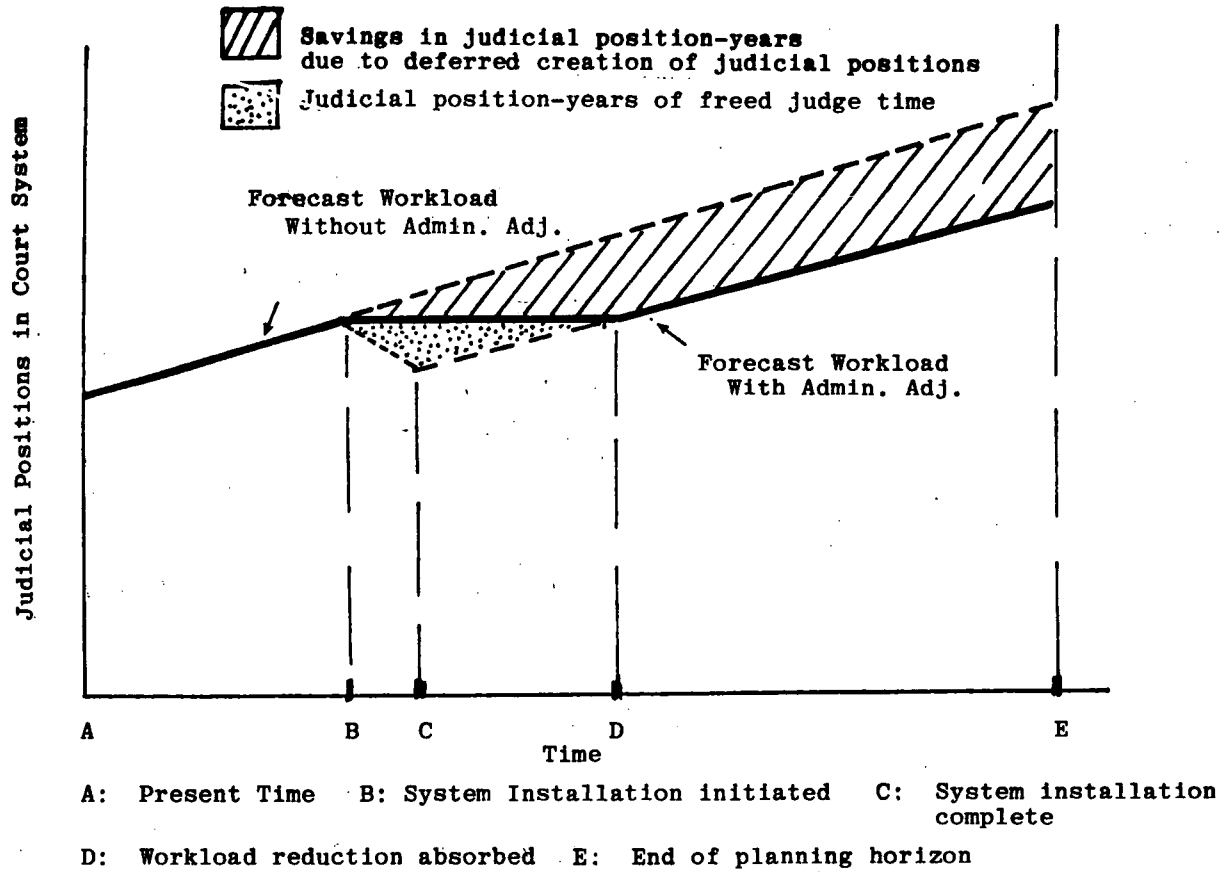
The top line in the graph is a projection of workload expressed in judicial positions assuming that traffic cases are handled in the courts. This projection was carried through to the end of the appropriate economic planning horizon for the analysis of all benefits and costs (this issue is discussed in Appendix C). The lower line is a projection of required judicial positions assuming administrative adjudication is used.

Starting with the time of initiation of the administrative adjudication system, the number of judicial positions is held constant until equal to the judicial positions required with a system of administrative adjudication. Thereafter, the number of judicial positions increases at the rate projected for the increase in workload associated with the use of administrative adjudication.

During the time between the initiation of system installation and its completion, the workload in the courts will decrease as shown by the dashed line drawn between the two projected workload lines. Thus, even though there is no change in number of judicial positions during this period, there will be freed judge time because the workload is less than the number of positions required.

EXHIBIT 5-1

Impact of Administrative Adjudication on Number of Judicial Positions



The difference between the projected number of positions without administrative adjudication and the projected number of positions with administrative adjudication is shown by the cross-hatched area on the chart. This area has units of "judicial position-years," and may be estimated graphically, geometrically, or by writing functions for the lines and by using calculus. Its monetary equivalent is obtained by multiplying the incremental cost of adding a judicial position-year by the number of judicial position years. These savings are due to deferred creation of judicial positions rather than to reduction in positions but still represent a realizable dollar savings to state and local government.

The shaded area, on the other hand, represents position-years of freed judge time. This time has an equivalent economic value if used for backlog reduction, etc., but cannot result in actual dollar savings unless other planned expenditures to achieve these objectives can be reduced or eliminated.

Thus, the model projects the number of judicial positions as follows:

- for the period preceding introduction of the system: follows the projected increase in workload for all cases;
- from the time of introduction of the system until freed judge time is absorbed: remains at a constant level;
- after freed judge time is absorbed: follows the projected increase in workload for non-traffic cases.

In order to use the model illustrated above, it is necessary to estimate:

- judicial workload as a function of time for all cases currently handled in the courts;
- the workload that would be removed from the judicial system by the use of administrative adjudication.

It is also necessary to address the following issues:

- (1) To what extent will the total number of judicial positions actually be altered by the introduction of an administrative adjudication system even though there is a reduction in workload? In the model shown, it was assumed that there would be no reduction in judicial positions as a result of the introduction of the system. Rather, it was assumed that the creation of new positions would be deferred until increasing workload for cases not covered by the administrative adjudication system reached the point where new judicial appointments would be required.
- (2) What is the timing of the introduction of the administrative adjudication system? The graph indicates that the system would be phased-in over some period of time. This assumption affects the amount of freed judge time that would accrue during the early stages of implementation.

The analyst should note that differing assumptions as to rates of increase (or decrease) in caseloads between traffic and non-traffic cases, and other assumptions, would lead to slightly different graphical patterns. The model presented, however, captures the basic features that are important for analysis of benefits.

This model was used in the California feasibility study. It was estimated that the incremental cost of judicial position-year in California was approximately \$102,500 in 1976, which was the base year selected for all monetary impact analyses. The results of using this unit cost figure were as follows:

- Statewide savings due to the deferred creation of judicial positions would amount to approximately \$3.6 million during the two-year period during which the system was being introduced.
- Thereafter, savings due to the deferral of new judicial positions would average approximately \$4.5 million per year during the first 15 years of operation.
- During the first 2 1/2 years of operation of the system, approximately 5.8 judge-years of time would be freed and made available for improving the level

of service in the courts such as through backlog reduction. The monetary equivalent of this time would be approximately \$650,000.

In California no attempt was made to estimate the actual backlog reduction that could be achieved or its monetary benefits to the public.

Impact on Clerical Positions: The chart on the next page illustrates the model that was used in the California feasibility study in dealing with clerical positions affected by administrative adjudication.

The assumptions used in this model are similar to those used for the judicial position model, with one important exception. In California, the workload impact on clerical personnel was so great that it was difficult to assume no decrease in number of positions.



It is assumed that there would be an actual reduction in numbers of personnel as a result of the introduction of administrative adjudication. The degree of reduction was based on two additional assumptions: First, the reduction would be accomplished by attrition; and second, that the reduction would not exceed 50% of that which could theoretically be obtained by means of the reduced workload caused by administrative adjudication.

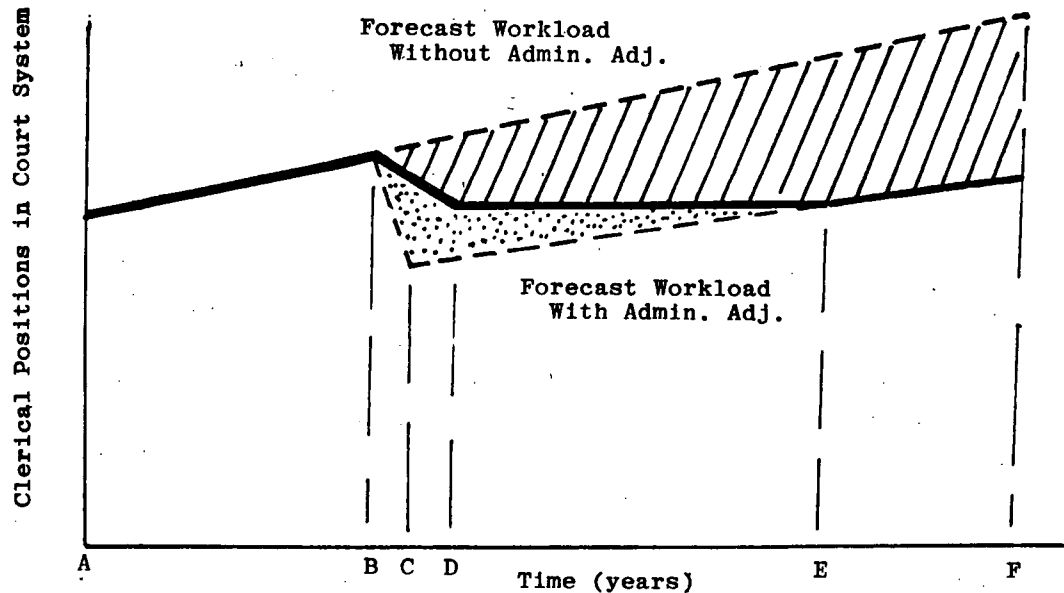
Thus, the impact on the actual number of clerical personnel in the court showed the following pattern: Up until the time of the introduction of the system, the number of positions follows the projected workload increases for all cases. At the time of introduction of the administrative adjudication system, it decreases at a rate equal to the current attrition rate for non-judicial personnel in the courts, and continues to decrease until 50% of the decreased workload has been accounted for. At this point, it remains constant until the increasing workload from non-traffic cases has been absorbed. Thereafter, it increases according to the projected non-traffic case workload.

The shaded and cross-hatched areas on the chart have the same interpretation as in the preceding chart for judicial positions.

EXHIBIT 5-2

Impact of Administrative Adjudication on Number of Court Clerical Positions

-  Savings in clerical position-years due to deferred creation of new positions and reduction in number of positions.
-  Clerical position-years of freed time.



- A: Present time
- B: System installation initiated
- C: System installation complete
- D: Reduction in personnel complete
- E: Workload reduction absorbed
- F: End of economic planning horizon



Using a unit cost per clerical position-year of approximately \$18,500 led to the following statement of impacts for California:

- During the first full year of operation, approximately \$10.8 million would be saved. This would increase to approximately \$16.3 million per year by the fifth year. (Savings during the first two years of system implementation will be approximately \$2.5 and \$7.5 million, respectively.)
- Savings would continue to increase, averaging approximately \$18.4 million over the period from the eighth year after implementation to the fifteenth year of the program.
- During the first seven years after program implementation, an average of the equivalent of \$3.3 million per year in non-judicial personnel time would be freed for level-of-service improvements.

New York Court Impacts: The statistics available for New York make it difficult to precisely identify the impact of their administrative adjudication system on the criminal courts. Part of the problem is that the non-moving violations were transferred to the New York City Parking Authority simultaneously with the implementation of their system of administrative adjudication. However, during the period of operation of these two systems, the traffic cases processed by the courts have been reduced from 4.6 million in 1969 to about 87,000 in 1973.

This has resulted in the reduction of eighteen judges and five courtrooms in New York City and two full-time judges and two courtrooms in both Buffalo and Rochester. Since the processing of parking violations involves relatively little judge time, it may be concluded that the changes in court workload and freed judge time may be largely attributable to administrative adjudication. However, precise estimates of the savings have not been developed for the New York system.

Results from the Seattle SAFE Project: The two-year SAFE program in Seattle permitted the courts to maintain a manageable docket during a period in which there was a 25% increase in total court trials.

The economic implications of the Seattle program were not analyzed during the project but would undoubtedly be significant. Relative costs of adjudication on a per case basis were estimated for Seattle and are discussed in Section 5.7, below.

Results from the Rhode Island SAFE Project: In Rhode Island administrative adjudication has freed the courts from a significant volume of cases. This has permitted other cases to be processed more quickly and has allowed new functions to be added to the responsibilities of the District Courts.

Appendix D provides an example of a questionnaire used to survey the attitudes of judges and court clerks toward administrative adjudication.

## 5.2 Police

The benefits associated with police depend largely on the degree to which the hearing process reduces police time associated with court appearances. In many jurisdictions this activity accounts for a substantial portion of police overtime.

It is necessary to estimate the reduction in workload that will occur as a result of the administrative adjudication system. Assuming there is a reduction, an assumption is needed as to how the savings will be realized. As with court personnel, there could be a reduction in police positions in response to reduced workload. Since this is an unlikely result, it may still be possible there are reduced costs due to reduced overtime or deferred creation of new positions in the future.

If these results appear to be unlikely, even though theoretically justified, the benefits can be measured by:

- additional person-hours made available for patrolling and investigation;
- the monetary equivalent of the additional person-hours made available for patrolling or investigating; or
- a change in police "productivity."

Changes in productivity measures can be asserted if the assumption is made that time spent in court is "non-productive." Here, the benefits are being expressed in terms of improved service levels, given the same expenditure of governmental funds, rather than in realizable monetary savings.

The models that would be employed to analyze these benefits would be similar in structure to those described previously for judicial and clerical personnel in the courts.

In the California feasibility study it was estimated that the benefits would be \$220,000 per year in realizable dollar savings due

to reduced overtime and that an additional \$550,000 would be realized in improved service levels, i.e., the monetary equivalent of added time for patrolling and investigation would be \$550,000 per year.

In New York it has been reported the police time in court has been reduced by 50% by the system changes.

In Rhode Island it was reported that:

"Most of the police departments claimed significant man-power savings under administrative adjudication because the need for police prosecutors at arraignment of most traffic cases has been eliminated; because officers spend less time at contested court cases; because of reduced clerical tasks due to the elimination of warrants in most traffic cases and the elimination of the *capias* as the follow-up to no-shows."\*

### 5.3 Prosecutors and Defenders

The considerations that apply to prosecutors will be almost identical to those that apply to the police. That is, benefits may be measured in terms of deferred creation of new positions, improved service levels, and so forth.

Also, the models for making these estimates are similar in structure. As with the police, it may be unlikely that there would be any deferral in the creation of prosecutor positions as a result of a system of administrative adjudication. In this case, the benefit is not in terms of realizable dollar savings but in terms of the improved service level — stated in terms of person-hours added, the monetary equivalent of the person-hours added, or by using a productivity measure.

### 5.4 Defendants

Apart from improved attitudes toward the adjudication process and changed driving behavior, the effect of an administrative adjudication system on the defendant could conceivably include the following:

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\* State of Rhode Island SAFE Project, National Highway Traffic Safety Administration, October 1976, p. 105.

- changes in the amount of money paid for monetary sanctions;
- changes in the time spent and fees paid for attending driver improvement programs; and
- changes in time and cost of appearances.

Estimating these quantities essentially involves a careful analysis of the sanction schedule along with the probability of certain offenses occurring, the density of defendants in relation to places where adjudication can occur, and the expected time spent in hearings and appeals.

In relation to these categories, the California feasibility study found the following:

Changes in the Amount of Money Paid for Monetary Sanctions: In California it was estimated that the gross revenues generated under the proposed administrative adjudication program would exceed those presently being generated because of reduced numbers of scofflaws and improved detection of multiple offenders. The increased amounts were estimated to be on the order of \$1.5 million per year. This is, of course, a cost to defendants.

Changes in Time Spent and Fees Paid Attending Driver Improvement Programs: Reduced referral to driver improvement schools would result from the use of the changed sanction schedule proposed for California. Accordingly, there would be a reduction in hours spent in driver improvement schools, in the time and cost of traveling to the schools, and fees paid. All of these items are economic benefits to defendants.

Insufficient data were available to estimate the dollar impact of the change in driver training sanctioning policies. However, it was estimated that in the aggregate, reduced costs of driver school attendance would exceed the increased monetary sanctions, thus yielding a net economic benefit to the defendant in California.

Time and Cost of Appearing for the Adjudication Hearing: Under the system proposed for California, travel time to attend the hearing would be increased because fewer locations for a hearing were to be provided under administrative adjudication than by existing municipal and justice courts.

While some increased travel would be required for some defendants, the majority of persons appearing would experience no increased travel time, and the overall increase in travel cost or time is not believed to be significant.

Overall, the number of defendant appearances required to contest a citation should be reduced under the administrative adjudication system. Because of recent changes in trial procedures, including the Los Angeles "instant trial," an accurate estimate of reduced appearances was difficult to formulate. In comparing administrative adjudication with the current system, it is believed that average travel time would be slightly longer; time spent waiting to appear in front of the adjudicator would be less under administrative adjudication, and the actual time appearing before the adjudicator would be slightly longer. In certain jurisdictions, this might result in a net increase in time and cost to the defendant and, in others, a net decrease. The statewide impact, in terms of time or cost, was not estimated, but it is believed that it would be, on the average, no longer or more expensive under administrative adjudication than under the current system.

#### 5.5 Implementing Agency Costs

Costs in this area can be divided into several categories:

- Initial system design;
- Pilot program operation or demonstration including evaluation;
- Final system design;
- Installation costs, operating costs, and benefits during the period of phasing-in the system;

- Routine operating costs after installation, including facilities, personnel with associated benefits, overhead, supplies, and indirect costs including data processing, training, the continuing evaluation of the program benefits, costs, and system modification.

It is also possible that the administrative adjudication system would reduce the costs of other functions such as driver license control by simplifying communications and unifying records.

Because the implementation of the system will have initial costs that would in all likelihood exceed benefits during the first few years, it is important that an appropriate planning horizon for the program be adopted and all costs and benefits projected over this planning horizon.

The correct approach for handling this problem is to estimate cash flows on a year-by-year basis over the planning horizon. These cash flows are then discounted to provide either an equivalent present worth of the system, an annualized benefit, or other measure of attractiveness such as a rate of return or benefit-cost ratio. The length of the planning horizon can significantly affect the perceived economic attractiveness of the proposal when any of these measures are used. These issues are discussed in further detail in Appendix C.

#### 5.6 Net Revenues to State and Local Governments

Apart from the specific impacts on the special groups discussed above, a critical concern for local government is with the net revenue or cost-revenue implications of the system. The following presents information abstracted from various studies that may be useful in developing arguments for or against administrative adjudication in other jurisdictions.

New York: The following cost implications of the New York system were reported in the LEAA report on administrative adjudication:\*

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\* Administrative Adjudication Bureau of the New York State Department of Motor Vehicles — An Exemplary Project, U.S. Department of Justice, Law Enforcement Administration, p. 22 ff.

Although it is difficult to quantify all benefits and costs of the AAB's operation, and to compare them with the corresponding pre-AAB benefits and costs, sufficient data are available to permit some analysis.

There are three major areas in which cost savings and other benefits have accrued as a result of AAB. For two of these — criminal courts and police — it is difficult to obtain quantitative information. However, it is generally agreed that with the AAB the amount of time that police officers spend in courts on traffic-related matters has been substantially reduced. Similarly, the AAB has helped to improve the operation of the criminal court system by removing non-criminal traffic cases from its jurisdiction. Such reductions can reasonably be expected to lead to lower costs for police and court services, or increased services in other areas, or a combination of these effects.

The third major area in which cost savings and other benefits have accrued is in the actual operation of the AAB. Although pre-AAB cost and revenue figures are not available, the AAB has reportedly increased overall revenues 25%, while reducing operating costs when compared with the prior court system. This is partly due to the greater number of summonses being issued, reductions in the number of summonses ignored, and a consequent increase in numbers of motorists adjudicated. It is also due to increasing efficiency in the operation of the adjudication systems, which is largely a result of the AAB's sophisticated computer processing system. Since AAB began, there are sufficient statistics to demonstrate that the initial investment was certainly justified in terms of its associated receipts and expenses.

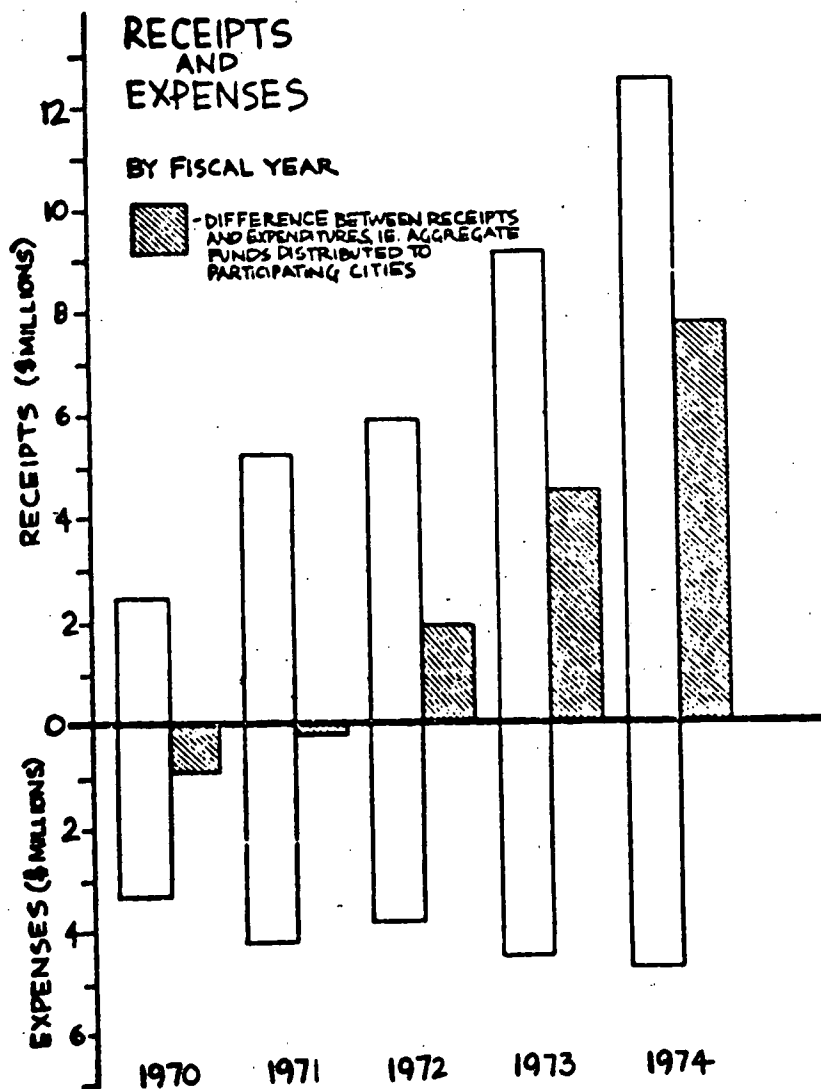
The net difference between receipts and expenses is distributed among the three participating cities, on the basis of the revenues received from each and the differing costs involved in providing services to each.

A financial summary for the first few years of operation is shown in the following charts. It shows wide variations across cities and over time in the average expenses of processing a summons. However, for New York City this figure has decreased every fiscal year — from a high of \$7.21 in its first year to \$4.38 in the year that ended March 31, 1975. This represents a reduction of 33%, which would be even greater if an allowance were made for the effects of inflation during the five-year period.



EXHIBIT 5-3

Total New York System Expenses and Receipts



Source: Administrative Adjudication Bureau of the New York State Department of Motor Vehicles, U.S. Department of Justice, p. 23.

EXHIBIT 5-4

Cost Per Summons in New York System\*

	<u>Summonses</u>	<u>Receipts</u>	<u>Expenses</u>	<u>. Available for Distribution</u>	<u>Cost per Summons</u>
<b>NEW YORK CITY</b>					
1970-71	408,306	2,398,372.66)	3,264,625.70)**	--	7.21**
1971-72	629,665	5,025,412.66)	4,228,218.50)	--	6.72
1972-73	569,910	5,534,376.89)	3,753,907.71)	1,711,410.30	6.59
1973-74	646,723	7,463,875.91	3,819,387.07	3,644,488.84	5.91
1974-75	937,611	10,966,871.40	4,108,913.52	6,857,957.88	4.38
Cum. Total:	3,192,215	31,388,909.52	19,175,052.50	12,213,857.02	
<b>BUFFALO</b>					
1972-73	11,875	140,890.00	56,064.37	84,825.63	4.72
1973-74	61,201	1,106,539.50	405,465.93	601,073.57	6.63
1974-75	55,162	852,804.00	369,736.34	483,067.66	6.70
Cum. Total:	128,238	2,000,233.50	831,266.64	1,168,966.86	
<b>ROCHESTER</b>					
1972-73	2,279	9,618.99	24,172.43	--	10.61
1973-74	31,973	462,580.00	318,536.02	129,490.54	9.96
1974-75	28,858	459,200.00	293,184.79	166,015.21	10.16
Cum. Total:	63,110	931,398.99	635,893.24	295,505.75	
<b>TOTAL: ALL OFFICES</b>					
	3,383,562	34,320,542.01	20,642,212.38	13,678,329.63	

\* 1974-75 expenses estimated, summonses and receipts actual.

\*\* Includes \$320,508.01 of Start-up Expense and \$2,944,117.69 of Operating Expenses. Only Operating Expenses were used in calculating Costs per Summons.

\*Source: Administrative Adjudication Bureau of the New York State Department of Motor Vehicles, U.S. Department of Justice, p. 24.

In the other cities the cost per summons is higher and the trend to lower costs is not so clear. As caseload levels increase and AAB operations in these cities are refined, it is expected that their cost per summons figures will decline.

The computerized data processing system employed by the Bureau has been largely responsible for the increased efficiency. It has eliminated personnel who would otherwise have been required for handling paper, verifying data, and statistical updating. It has removed the need for excessive office space for dead files and provided checks and balances throughout the adjudication process, thereby eliminating many costly mistakes.

Start-up expenses were about 10% of the first-year cost in New York, and about one-third of this amount was for staff expenses and one-third for equipment (primarily visual display units), with the remainder for travel, space rental, telephone, and indirect costs.

California: In the California feasibility study, benefits to state and local governments were categorized in two ways: (1) realizable dollar savings, and (2) the economic value of improved service levels.

Benefits, disbenefits, and costs were aggregated into the following six categories:

- deferred creation of municipal court departments;
- savings associated with court clerical personnel;
- law enforcement agency benefits;
- prosecutor work load;
- increased revenues due to detection of recidivists and other factors;
- reduced reimbursement for driver training programs;
- system installation and operating costs in the California Department of Motor Vehicles.

The following charts show the results of estimates made for California.

EXHIBIT 5-5

California Feasibility Study

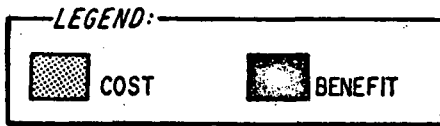
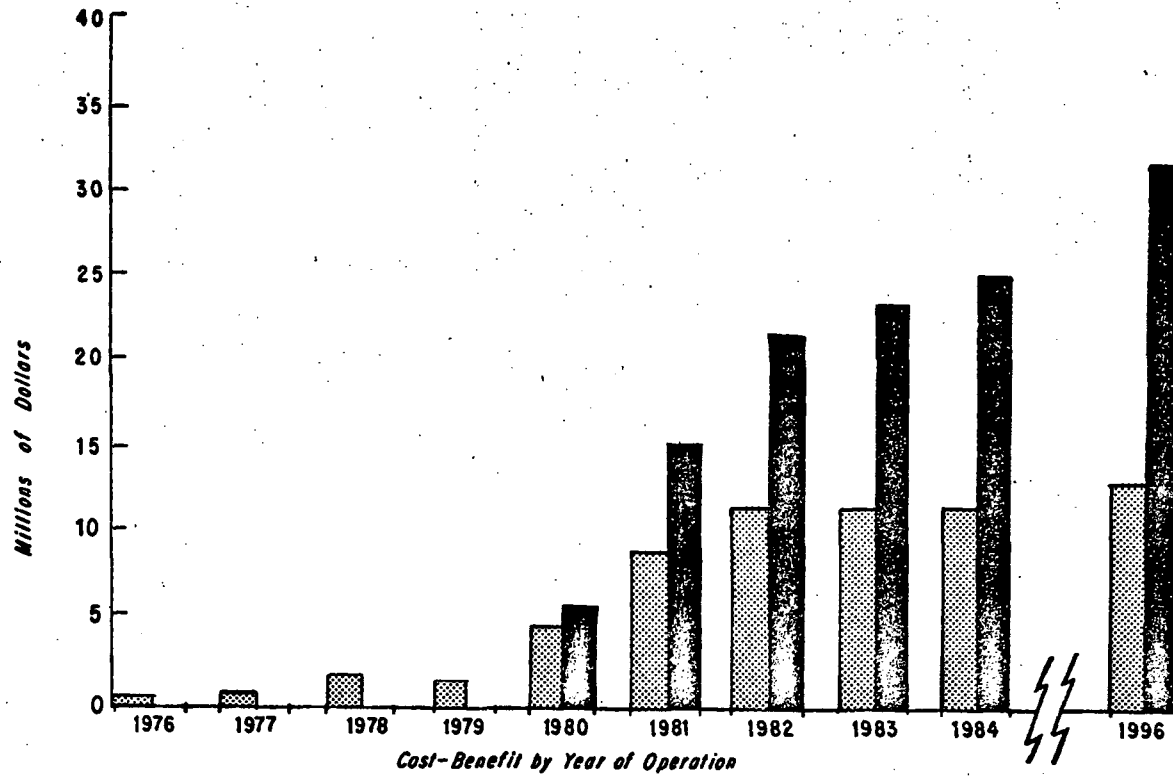
Synopsis of Benefits and Costs  
to Governmental Entities in 1976 Dollars  
at Time of Statewide Operation

<u>Category</u>	<u>Realizable \$ Savings</u>	<u>Economic Value of Increased Service Level</u>	<u>Costs</u>
Deferred Creation of Municipal Court Departments	\$4.1 million per year (\$3.6 million during Phase III)	\$650,000 during Phase III only.	
Nonjudicial personnel in Municipal Court	\$10.8 million per year during first full year of operation increasing to over \$16 million after 12 years (\$10.0 million during Phase III)	Average of \$3.3 during Phase III and first five years of Phase IV. None thereafter.	
Law Enforcement Agencies	\$220,000 per year	\$550,000 per year	
Prosecutor Workload			
Increased Revenue Due to Detection of Recidivists, Etc.	\$2.5 million per year		
Reduced reimbursement for driver training by local and state government	\$4.0 million per year		
Administrative Adjudication System Operation by DMV			\$11.8 mil. per yr. during 1st full yr. of operation; \$14.4 mil. during 2 yr start up; \$4.4 mil. in initial system design & pilot program over 3 1/2 yrs.

Source: Administrative Adjudication of Traffic Offenses in California, Vol. 1, p. 135.

EXHIBIT 5-6

Comparison of Cost and Benefit by Year of Operation for California System



Source: Administrative Adjudication of Traffic Offenses in California, Vol. 1, p. 137.

Overall, the study concluded that by deferred creation of new municipal court departments, through reduced workload for non-judicial personnel in the municipal courts, and through the reduction of workload in other areas, the proposed administrative adjudication system has the potential for allowing actual dollar savings of about \$19 million during its first full year of statewide operation in 1982. In addition, the equivalent of approximately \$4 million per year may be realized in increased service levels, rather than dollar savings, during the first few years of statewide system operation.

By reduction of scofflaws and increased probability of detection of multiple offenders, somewhere in the neighborhood of \$2 to \$3 million in additional revenue may be generated.

The net cost of operating the system through the Department of Motor Vehicles was estimated to be \$11.8 million in the first full year of operation, after approximately \$4.4 million in the initial start-up costs. Costs were estimated at approximately 24% of current revenue generated from infractions, or approximately \$3.50 per infraction conviction.

From an overall system standpoint, administrative adjudication appeared to be economically attractive to state and local governments in California, since likely overall system savings exceed likely costs.

There was a problem, however, which was not resolved during the feasibility study. If the operation of the system was financed by deducting a fixed 24% from the total revenues collected and returning the remainder to local government, some counties and cities could be adversely affected. The reason for this was that while realizable dollar savings plus increased revenue to local government should exceed operating costs from the standpoint of the state as a whole, some counties and cities might not be able to realize sufficient savings to overcome a 24% revenue loss.

Moreover, the average current fine varied from county to county, and if the administrative adjudication system used a fixed statewide monetary sanction schedule, revenue collected by the proposed system would exceed current levels in some counties and would be less in others.

Accordingly, it was likely that at least a few cities and counties could be adversely affected by an administrative adjudication system which applied a uniform statewide sanction schedule, and was financed by removing a fixed percentage of revenues collected.

It was possible to conceive of a revenue distribution system that would audit local governmental savings and variances in sanction revenues to ensure that no county incurred a net loss. It was clear, however, that any such system would be extremely complex and probably not practical to implement over any extended period of time.

During the California feasibility study, the effect of having eliminated warrants on local governmental revenue was also explored and provides a good example of the need to be sensitive to subtle incremental costs and benefits of the system.

Under the proposed administrative adjudication system, local government would not collect those additional revenues resulting from fines levied on infraction violators arrested on warrants for failure to appear. The estimated reduction in revenue to local governments was approximately \$2 million per year.

However, the net impact of this loss of revenue must be balanced against the costs of collecting this revenue.

The average incremental revenue generated due to warrants was approximately \$25 per person arrested. It is likely that the cost of arrest, transportation, booking, and incarceration is in excess of \$25. Accordingly, the reduction in revenues would be balanced by reduced law enforcement agency costs.

The Seattle SAFE Project: It was estimated that the cost to process a case in the Seattle SAFE project was \$13.22. Comparable costs were \$40.00 for a formal court trial and \$9.00 when the defendant entered a plea and paid a fine by mail. An estimate of the revenue-cost implications of extending the system to a statewide level of operation was not made.

The Rhode Island SAFE Project: It was reported that,

"Cost comparisons with the District Court disposition of traffic cases were difficult to make because of limited data. At a gross level, the average court cost of disposing of a case regardless of type was at least \$19.56. The AAD hearing cost of \$16.82 is cost competitive in this comparison."\*

The analyst must keep in mind that estimating unit case processing costs for traffic offenses may not satisfy the information needs of local government and, in themselves, say little about the overall revenue-expenditure impact on local government.

Even though it is shown that unit case processing costs are less under administrative adjudication, there will be no realizable dollar savings to local government unless there is an actual reduction, now or in the future, in expenditures. Since actual reductions in numbers of judges, police, and court clerical personnel will be unlikely in many jurisdictions, it is necessary to address the potential for deferred creation of new positions in these areas in order to justify the system.

## 5.7 Traffic Safety

At the present time, the analyst has limited options for estimating the traffic safety benefits of administrative adjudication.

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\* State of Rhode Island SAFE Project, National Highway Traffic Safety Administration, October, 1976, p. v.



In order to argue for improved traffic safety benefits from administrative adjudication, it is necessary to argue that an improved system for the treatment or rehabilitation of traffic offenders, as a practical matter, can best be accomplished under the administrative system. The reason for this is that to date there is no empirical data that show that the system of adjudication, per se, influences recidivism or the frequency of occurrence of accidents.

On the other hand, there is a very substantial body of literature describing the relative effectiveness of different treatments or rehabilitation approaches for traffic offenders. There is also a consensus that traditional methods of adjudication are not suited to improving traffic safety.

Accordingly, the analyst has the following options:

(1) Argue that the proposed system of adjudication contains features that have been shown (based on the literature) to reduce recidivism or accident frequency and that these features are unique to the proposed system. It may then be argued that the implementation of the system will reduce recidivism and/or accident frequency although estimating the degree of reduction will be illusive.

(2) Use the argument that the system of adjudication, per se, does not affect recidivism or accident frequency, and therefore, while it may be difficult to project incremental traffic safety benefits over the traditional adjudication system, there can be no disbenefits.

In the first line of argument, the analyst must show that from the standpoint of cost, judicial interest, or the feasibility of procedural changes, it is either extremely costly or otherwise unattractive to accomplish the same traffic offender treatments in the traditional adjudication system. A feasibility study which claimed traffic safety benefits for administrative adjudication while ignoring the feasibility of achieving similar benefits in the traditional system would certainly be open to attack.

When the second line of argument is pursued, traffic safety benefits are essentially removed from consideration. This approach would, however, raise problems with the development of a traffic safety sanction model. From a legal perspective, the sanction model should serve to reduce the likelihood of subsequent traffic offenses. If the sanction model does not deter recidivism (or reduce accidents) its use may be challenged.

The remainder of this section provides information that will be helpful in developing arguments related to traffic safety benefits, including a discussion of the features of a sanction plan that is in consonance with improved traffic offender treatment.

#### Findings on the Effectiveness of Traditional Adjudication

Methods: The potential value of administrative adjudication as a traffic safety countermeasure was analyzed by a special ad hoc task force appointed by the National Highway Safety Advisory Committee.\* The committee reviewed, over a three-month period in 1973, the present traditional judicial adjudication of traffic violations; innovations in New York, Florida, Virginia, and California; available written materials; and findings of other commissions studying present United States methods of traffic adjudication. Their findings and recommendations include the following:

- Traffic offense adjudication under the traditional traffic law system is reasonably adequate in the determination of guilt. However, traffic case processing is beset by many problems and has proved to be less than ideal in contributing to improvements in traffic safety.
- Traffic offense adjudication as presently constituted has made little demonstrable contributions toward newly formed societal goals of the promotion of traffic safety and the improvement of driver behavior. It is not an adequate subsystem or traffic law system component. It has had little measurable effect in deterring initial or subsequent traffic violations by offenders or other drivers. As such, traditional criminal court traffic case processing is inadequate and ineffective.

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\* Final Report of the Ad Hoc Task Force on Adjudication, U.S. Department of Transportation, NHTSA, 1973.

- Traffic offense adjudication is a key component of the traffic law system. The promotion of traffic safety depends on adjudication's effectiveness within the system. Traditional traffic case processing does not sufficiently emphasize both selective adjudication and the goal of highway safety and driver improvement through retraining and rehabilitation.
- All traffic offenses do not have the same degree of severity or potential severity; thus, all offenses should not command the same degree of criminal processing and sanction time and resources. Traffic case adjudication inadequately differentiates between the problem driver and the average traffic offender.

To achieve integrated-traffic law system components that combine traffic adjudication with traffic safety and improved driver behavior, the Ad Hoc Task Force recommended a new approach to traffic case processing which contained the following basic features.

- Adjudicate lower-risk category of traffic infractions by simplified and informal judicial, quasi-judicial or para-judicial procedures.
- Continue to process high-risk traffic offenses criminally.
- Eliminate incarceration as a traffic infraction sanction.
- Give priority to identifying problem drivers, assigning them to treatment and monitoring the results.
- Create an adequate electronic data processing system to serve police, law enforcement, driver licensing and traffic adjudication; especially for the purpose of identifying the problem driver.

The Ad Hoc Task Force also suggested that the traffic adjudication task be broadened to include the goals of both adjudication and the promotion of highway safety; that all but the most serious traffic offenses should be reclassified "Traffic Infractions"; that a more simplified, informal, and administrative type of procedure for traffic infraction adjudication and sanctioning should be adopted; and that highway

safety be improved by better identification and treatment of problem drivers.

The Ad Hoc Task Force concluded that adoption of their recommendations would result in a more ideal traffic law system that would advance highway safety through traffic offense adjudication. The recommended procedures were believed to offer a higher probability of reducing accidents than the traditional court system. These recommendations are reflected to a large degree in the models of administrative adjudication developed in New York, Rhode Island, and California.

A Traffic Safety Oriented Adjudication and Sanction Model:

The relationship between adjudication and traffic safety is based in large part on the hearing environment and the sanctions used. The model developed as part of the California feasibility study is illustrative of an attempt to create an administrative adjudication system which is persuasive as to likely traffic safety benefits.

A sanction and treatment sequence was proposed that would vary according to the severity of the offense and/or the cumulative number of violations the motorist had incurred in a specific period of time. The intermediate objective of the sanction is to discourage repetition of violations and encourage better driving practices. The end objective is, of course, reduced traffic accidents.

Since scientific knowledge of what constitutes an optimally effective traffic violator sanction system is limited, the value of any current model must be considered tentative. Nevertheless, rational judgment coupled with trends in empirical research, result in certain characteristics of a "model" driver improvement sanction program.

The driver improvement sanction model should sequentially proceed from inexpensive treatments for the minimal violator to more expensive and detailed treatment for the advanced violator.

In addition to the common sense attractiveness of a graduated approach, the following advantages deserve mention: (1) the

model results in a large number of drivers being treated thereby maximizing the net potential impact of driver improvement on accidents; (2) the unit cost of treatment tends to be proportional to the severity of the driver's record; (3) since most drivers do not recidivate to advanced records, even when untreated, the use of minimal treatments at lower point counts results in a more attractive cost-benefit relationship; (4) there is no persuasive evidence that expensive treatments are more effective than less expensive treatments; and (5) the model combines sanctions presently used by the courts with those used by driver licensing agencies.

EXHIBIT 5-7

Monetary Sanction and Traffic Safety Treatment Schedule\*\*

Driver Record Point Count Prior 12 Months	Fines (Average)		Treatment					
	Speeding	Other	W/L*	Educa-tion	Contingency Contracting	Suspension	Revo-cation	Appear-ance
0	20	15	No	No	No	No	No	No
1	24	18	No	No	No	No	No	No
2	30	22.50	Yes	No	No	No	No	Yes
3	37	27.75	No	Yes	No	No	No	Yes
4	45	33.75	No	No	Yes	No	No	Yes
5	54	40.50	No	No	No	Yes	No	Yes
6+	54	40.50	No	No	No	No	Yes	Yes

\*Warning Letter

\*\*Source: California Feasibility Study

Under the model, shown in Exhibit 5-7, a driver improvement treatment would be triggered by the accumulation of points on the driver's record. A point is defined as any moving traffic violation or accident.

Based on the driver's prior record, this model includes a recommended fine and the driver improvement treatment for use by the hearing officer. It is important to recognize that the fine and treatment components are not "either/or" alternatives. In other words, violators would be subject to both the fine and the treatment component indicated at each level of the model.

One potential problem with the use of traditional monetary sanctions under administrative adjudication relates to their effectiveness. Fines in a judicial setting may be viewed as punishment; in an administrative setting the objective is traffic-safety oriented, i.e., reducing recidivism or accidents. Administrators may eventually be faced with the challenges to monetary sanction models if they cannot demonstrate improvements in driving performance.

Traffic Safety Results from Recent Programs: The New York administrative adjudication system was not designed to implement new traffic safety treatment systems and no improvement in traffic safety can be attributed to the system.

The most recent results from the Seattle SAFE project indicate that offenders processed by the magistrate hearing method have significantly increased times to the next violation or the next accident.

MEAN TIME IN DAYS TO OCCURRENCE OF  
A NEW OFFENSE OR ACCIDENT\*

<u>Procedure</u>	<u>Violations</u>	<u>Accidents</u>
Formal Court	125 days	141 days
Magistrate	150 days	184 days

\*Source: Report on Administrative Adjudication of Traffic Offenses, NHTSA, July, 1971.

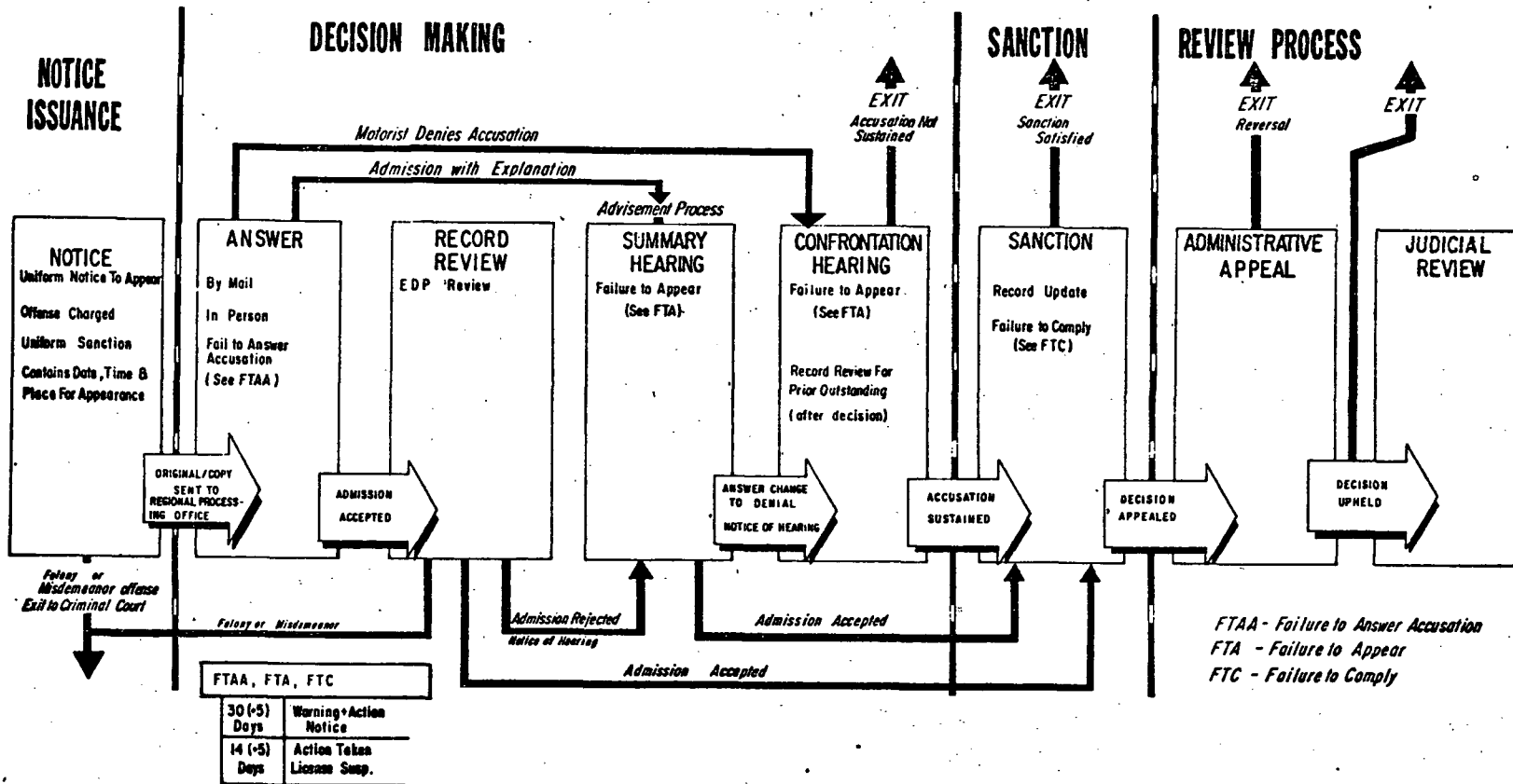
## APPENDIX A

Appendix A provides three exhibits which show how features of administrative adjudication systems can be illustrated. This is followed by a public information publication used in California.

APPENDIX A (Continued)

EXHIBIT A-1

California Administrative Adjudication Process\*



A-2

The diagram above was used in briefings for special interest groups during the California feasibility study. The overall system was divided into Notice Issuance, Decision Making, Sanction, and Review.

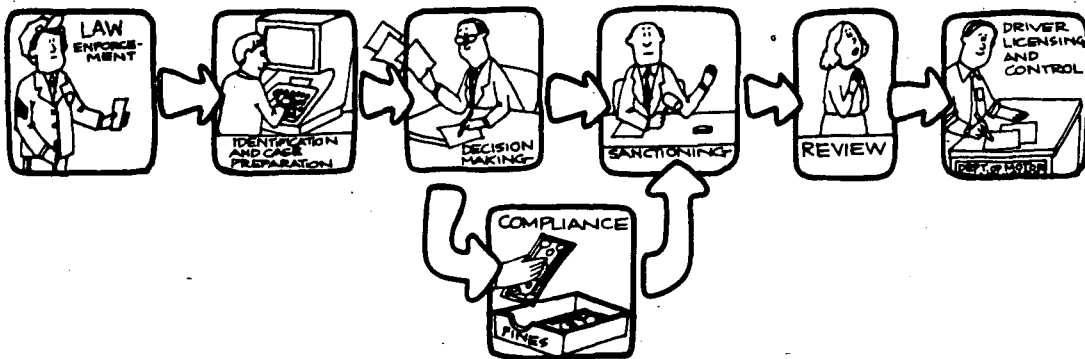
\*Source: Administrative Adjudication of Traffic Offenses in California, Vol. I, p. 36.



APPENDIX A (Continued)

EXHIBIT A-2

Elements of the Traffic Offense Adjudication Process\*



Diagrams of this nature provide a simple but effective means of illustrating the proposed system and contrasting it with the current system or other alternatives.

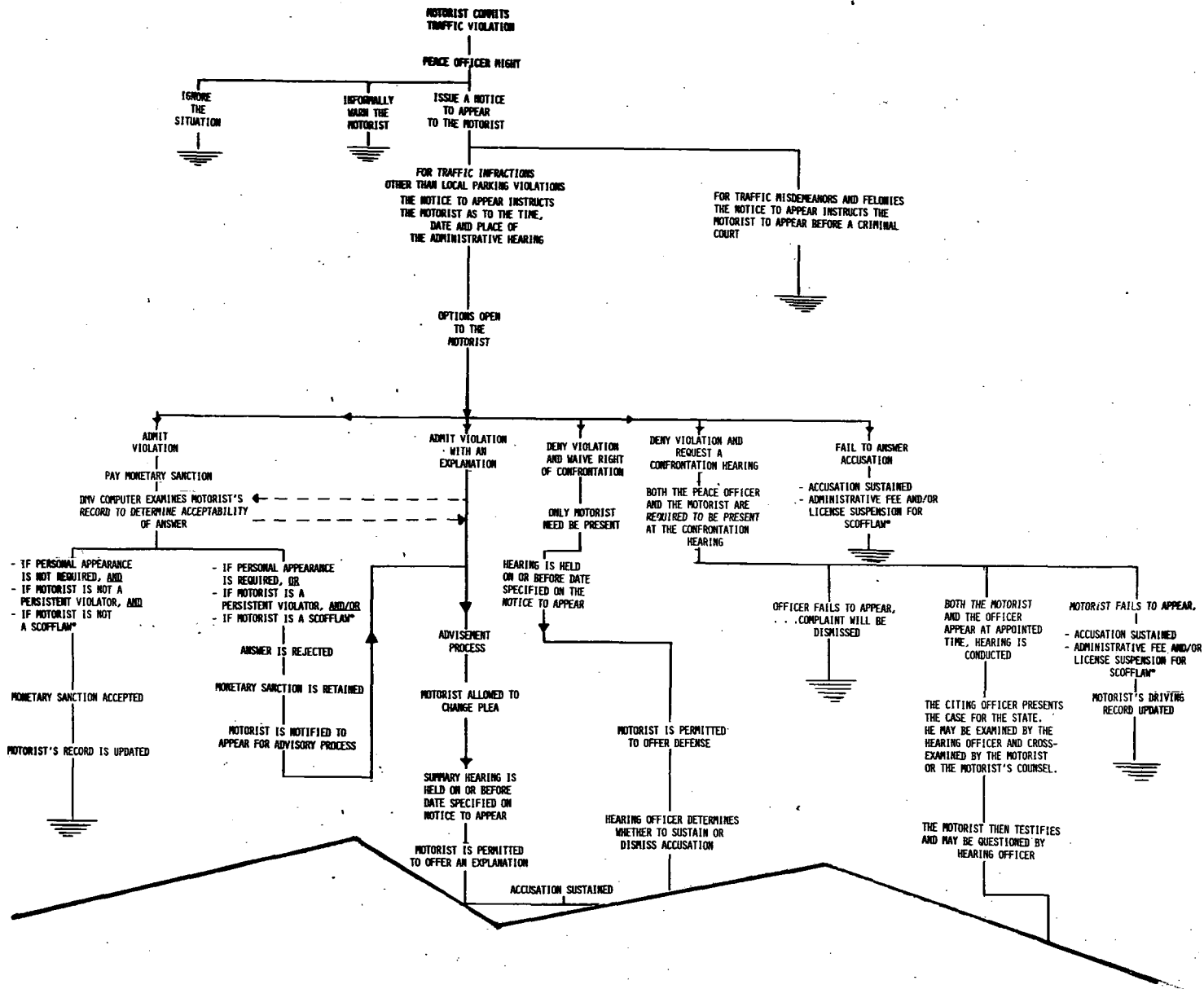
\*Source: New York State Bureau of Motor Vehicles Administrative Adjudication Bureau, LEA, p. 9.

APPENDIX A (Continued)

EXHIBIT A-3

The Administrative Adjudication Process\*

Summary of Major Options and Actions



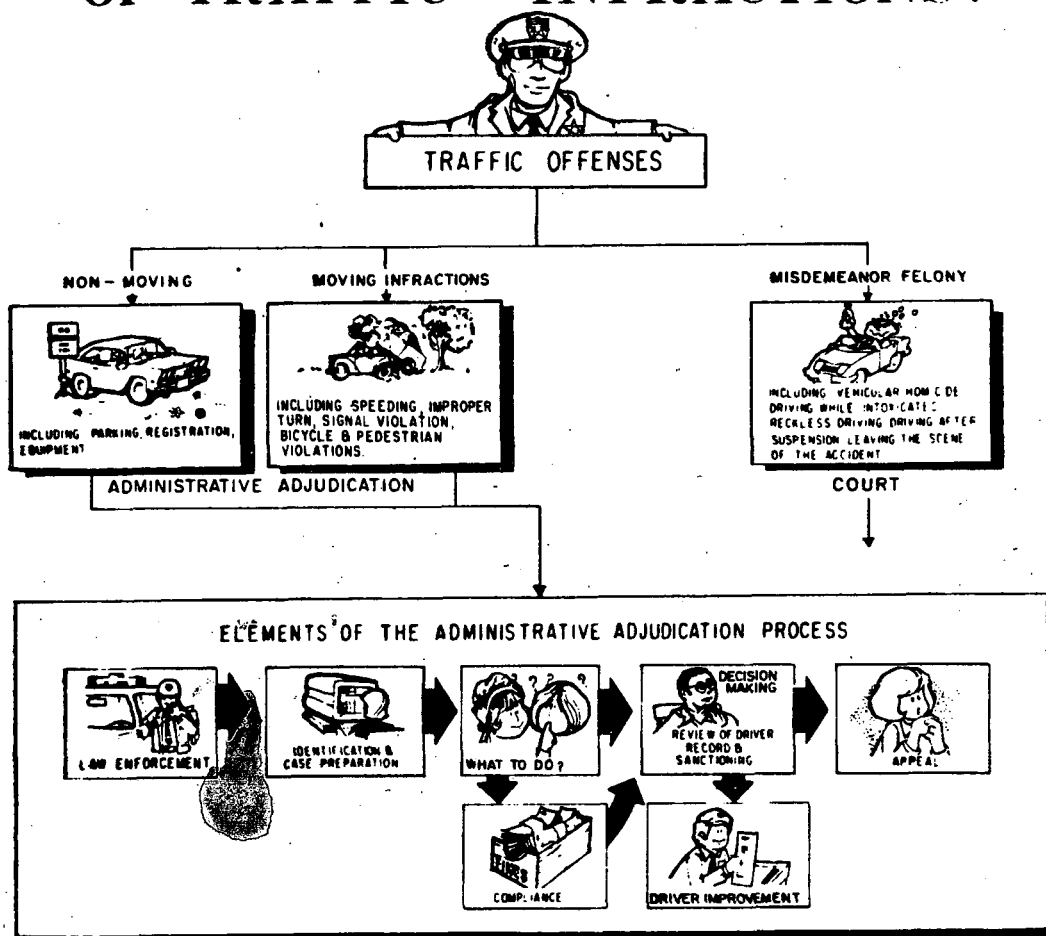
A-4

This diagram was used to design the options open to the defendant resulting from actions by the administrative agency. During the course of the analysis, numbers of persons flowing through each of the paths were estimated in order to assess benefits and costs.

\*Source: Administrative Adjudication of Traffic Offenses in California, Vol. 1, p. 37.

California Public Information Document

# WHAT IS ADMINISTRATIVE ADJUDICATION OF TRAFFIC INFRACTIONS?



June 1977

APPENDIX A (Continued)

The State of California is investigating various possibilities for improving the judicial system's ability to deal effectively with complex criminal and civil matters. One of the possible approaches would move the processing and adjudication of traffic cases (infractions) from the court system to administrative hearing offices.

This booklet describes how the "administrative adjudication" system would work and tells about the proposed pilot project which would be designed to thoroughly evaluate the system.

Comments and suggestions about the proposed administrative adjudication pilot project should be sent to:

Thomas J. Novi, Director  
Administrative Adjudication Project  
Department of Motor Vehicles  
2415 First Avenue  
Sacramento, CA 95819

## BACKGROUND

Over the last thirty years, increased motor vehicle travel has resulted in a steadily increasing number of traffic accidents. At the same time, traffic safety laws designed to reduce accidents have been enacted and enforced throughout the state. As a result, California courts now process over four million citations per year for moving traffic violations.

There has been increasing concern in the past few years about the efficiency of the courts in handling this large volume of citations. Studies of the traffic court system have found a number of problems which cannot easily be solved:

- The large number of traffic citations crowds the courts, taking up time which could better be spent on more serious crimes.
- Adjudication of traffic citations in the courts is very expensive.
- Fines and penalties for traffic violations are often not aimed at improving traffic safety.
- The courts have incomplete driver records and therefore often apply the same sanctions to a good driver as to a driver who has had many citations and/or accidents.
- Court procedures and sanctions vary from court to court, so that two persons committing the same violation in different counties may receive greatly different sanctions.



Because of these and other problems, the State Legislature is investigating various kinds of court reform. One of the most promising alternatives is the "administrative adjudication" system. This system would be implemented in municipal court districts, which are in urban areas where the problems of court congestion and traffic safety are most severe.

### WHAT IS ADMINISTRATIVE ADJUDICATION?

Administrative adjudication of traffic infractions is an approach to traffic court reform which would move adjudication and sanctioning of traffic infractions from the municipal courts to a new State department called the Administrative Adjudication Board. This Board would have responsibility for promulgating rules and regulations for conducting traffic infraction hearings, and would hear appeals from the decisions of hearing officers.

The Administrative Adjudication Board, through an appointed Executive Director, would appoint hearing officers, provide facilities, and establish regulations for traffic infraction processing, hearings, and sanctioning including license suspensions and revocations. Hearings conducted under the administrative adjudication system would be informal, with the objective of increasing traffic safety rather than of punishing a law breaker. The hearing officer would not need to be a lawyer or a judge, but would have legal training in criminal, administrative, and constitutional law, knowledge of the rules of evidence, and training in the field of traffic safety.

If a person did not agree with the finding of the hearing officer, or felt that his rights had been violated or that the sanction was too severe, appeal could be made to the Administrative Adjudication Board, and from there to the Superior Courts.

### IS ADMINISTRATIVE ADJUDICATION REALLY BETTER?

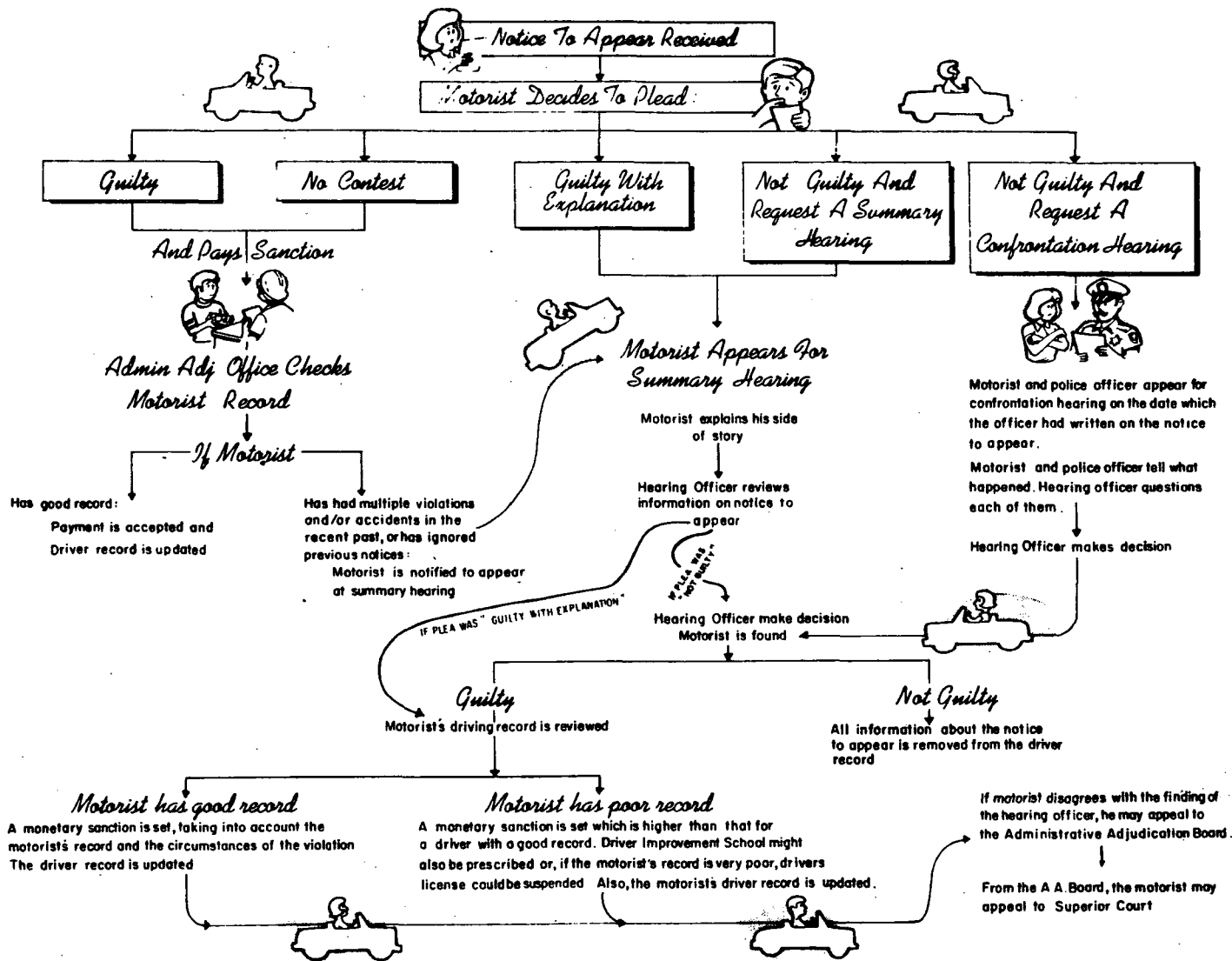
Administrative adjudication of traffic infractions began in New York City about 21 years ago. The system proved so successful that the cities of Buffalo and Rochester asked that they be allowed to participate. New York's success has caused most of the state of Rhode Island to convert to administrative adjudication. Both the Federal Department of Justice and the National Highway Traffic Safety Administration strongly support administrative adjudication because of its potential for improving traffic safety and for relieving congestion in the courts.



## APPENDIX A (Continued)

In 1975, the California Legislature requested that the Department of Motor Vehicles conduct a feasibility study to investigate the potential impact of administrative adjudication in California. The feasibility study, conducted in cooperation with an advisory committee composed of judges, court personnel, lawyers, and other interested parties, was submitted to the legislature in April, 1976. The feasibility study concluded that administrative adjudication would have a number of advantages, including:

- **Decreased Costs**—Hearing officer salaries would be less than that of judges, fewer personnel would be needed, state and local law enforcement officers would make fewer court appearances, and administration of the system would be more efficient due to use of computer technology.
- **Increased Revenue**—Multiple offenders would be more accurately detected and would receive higher fines.
- **Uniform Procedures and Sanction Schedules**—The Administrative Adjudication Board would establish uniform rules and regulations and a sanction guide which would be followed in all hearing offices, eliminating many inconsistencies which exist in the court system.
- **Reduced Congestion in the Courts**—Removing traffic infraction processing and adjudication from the municipal courts would allow these courts more time to deal with serious crimes.
- **Better Driver Records**—The computerized, "on-line" driver record system would allow better identification and control of negligent drivers.
- **Traffic Safety Emphasis**—The administrative adjudication system would emphasize sanctions and treatments aimed at improving driver behavior, rather than punishment of violators.
- **Increased Public Convenience**—The majority of hearings would be held at a time chosen by the cited person, and hearings could be held at any hearing office, so long as the citing officer was not required to appear.



The Administrative Adjudication Process



## APPENDIX A (Continued)

### HOW WOULD ADMINISTRATIVE ADJUDICATION WORK?

#### A CASE HISTORY

Mary K. was driving down Holt Avenue one evening when a bus making a lane change cut her off and nearly forced her into a parked car. She was so upset by her near accident that she ran through a red light a couple of blocks up the street.

A police officer saw Mary run the red light and pulled her over to the side of the road. The officer gave Mary a notice to appear which described the violation and stated that she had the right to request an administrative hearing. The notice also gave the date (14 or more days after the incident) on which Mary could appear for a hearing if she wanted to have the officer present at the hearing.

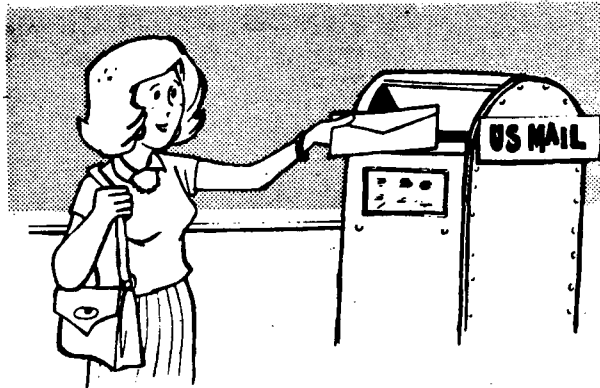
The notice to appear described the five options Mary had for responding to the notice:

- Mary could plead guilty.
- She could plead guilty with an explanation of the circumstances.
- She could plead "no contest".
- She could plead innocent and have a hearing with the citing officer present (a "confrontation" hearing).
- She could plead innocent and have a summary hearing at which the officer need not be present.

#### *Mary Pleads Guilty*

Mary decided that she would plead guilty, so within 14 days she mailed in her notice to appear along with the payment which was indicated on the back of the notice.

Once her payment was received, Mary's driver record was updated and checked for previous citations. If she had had too many prior citations or some other problem with her record, she would have been required to go to a hearing office for a hearing, where the hearing officer would consider all the facts and decide on the proper sanction.



## APPENDIX A (Continued)

### *Mary Pleads Guilty With an Explanation*



Mary thought that her near accident deserved some consideration when her fine was being set, so she decided that she wanted to explain the situation to the hearing officer at a summary hearing. She appeared at the hearing office at the time of her own choice (within 14 days of receiving the notice) and had her summary hearing at that time.

At the hearing, the hearing officer listened to Mary's explanation and checked her prior record. The hearing officer then set the appropriate sanction considering the circumstances, staying within guidelines established by the Administrative Adjudication Board. Mary accepted the decision and her driving record was immediately updated through a computer hook-up to the statewide record system. If Mary had thought the decision of the hearing officer was unfair, she could have appealed to the Administrative Adjudication Board, and from there to the Superior Court.

### *Mary Pleads "No Contest"*

Mary decided that she didn't want to admit or deny that she committed the infraction, but would just pay the sanction. She mailed her notice to appear in to the hearing office with the "no contest" box checked on the notice. Her response was processed just as it would have been if she had plead guilty, but her answer could not be used as an admission of guilt in any future criminal or civil court actions.

## APPENDIX A (Continued)

### *Mary Pleads Not Guilty and Asks for a Confrontation Hearing*

Mary thought that the light had still been yellow when she went through the intersection, so she decided that she would plead not guilty and that she wanted to have the traffic officer present at the hearing. She mailed in her notice to appear within 14 days, stating that she wanted to have a confrontation hearing.



The hearing took place on the date which the police officer had written on the notice to appear. The officer and Mary each told their side of the story under oath, and Mary was allowed to question the officer, who was also allowed to question her if he wished. Mary could have had an attorney represent her if she had wanted to, but the hearing was conducted in a very informal, relaxed manner. As a result, Mary decided that she could get a fair hearing without legal aid.

The hearing officer asked both Mary and the police officer for further details of the incident, and finally decided that Mary had in fact run the red light. After the decision, the hearing officer looked up Mary's driving record using his computer terminal. It turned out that Mary had no prior violations. On the basis of Mary's prior record and the statements of Mary and the officer, the hearing officer set a monetary sanction within the guidelines established by the Administrative Adjudication Board. He could also have sent her to traffic school or even suspended her license if her record was extremely poor.

Mary accepted the decision and paid her sanction, but she could have appealed to the Administrative Adjudication Board by paying a ten dollar fee. If the Board found in Mary's favor, any fees or sanctions which had been paid would be refunded. If the Board found against Mary, she could appeal to Superior Court.

### *Mary Pleads Not Guilty and Requests a Summary Hearing*

Mary decided that she would plead not guilty, but that she didn't need to question the police officer who gave her the ticket. She went to a hearing office within fourteen days and had a summary hearing at that time.

At the hearing, the information on the notice to appear was given the same weight as if the police officer had appeared and testified. Otherwise the hearing officer followed the same procedures as would have been followed if Mary had requested a confrontation hearing.

## APPENDIX A (Continued)

### THE PILOT PROJECT

Although the administrative adjudication system appears to have a number of potential advantages, it was decided that a major reform of this type should not be attempted without first trying it out on a pilot basis.

For this reason a bill has been introduced to the State Legislature (AB—1068 Fazio) which proposes that a pilot test of administrative adjudication be conducted in Sacramento, Yolo, and Placer counties. The pilot project would be conducted between January 1, 1979 and July 1, 1984. Revenues collected would be distributed to the pilot counties according to the distribution system already used for revenue from the courts.

During the pilot, infractions which would have been handled in municipal courts would be handled by administrative hearing officers selected according to civil service regulations. In rural areas where justice courts have jurisdiction, infractions would be processed in the same manner as they are currently processed. There would be an effort to increase communications between these courts and the Department of Motor Vehicles in checking the driver record. This is designed to increase the information a judge has before determining a sanction.

On January 1 of each year during the pilot, a report would be submitted to the Legislature by the Administrative Adjudication Board which would include the comments of the independent consultants involved with the evaluation of the pilot study. The evaluation would assist the Legislature in deciding whether or not to implement administrative adjudication of traffic infractions statewide.

## APPENDIX B

### SEPARATION OF POWERS

One of the more difficult issues to grasp, but one that must be considered in the design and analysis of an administrative adjudication system, is that of "separation of powers."

The following excerpts from a paper by Robert Force provide insights into the separation of power issues in administrative adjudication. (California Feasibility Study, Vol. II, p. D-112, ff.)

Consideration of administrative adjudication in lieu of the current judicial process poses several constitutional problems, among which the separation of powers issue is preeminent. The central issue is: "Does the doctrine of separation of powers prohibit the administrative adjudication of traffic violations?" This issue is essentially one of state constitutional law, and since the laws of the 50 states differ in degree and substance, caution must be exercised in offering any absolute conclusions. Nevertheless, it has been concluded that a statutory scheme can be drafted that would not violate the doctrine of separation of powers. This would be a statute which:

- (1) complies with the due process requirements for administrative adjudication;
- (2) is applicable to minor traffic violations (which comprise the bulk of all violations);
- (3) is part of a decriminalized approach to traffic violations which precludes incarceration as a sanction;
- (4) utilizes sanctions that either are fixed by the legislature, are traffic safety oriented, or which are imposed according to standards established by the legislature; and
- (5) provides for some form of ultimate judicial review.

"Separation of powers" is generally accepted as referring to the division of government among three departments, and each

## APPENDIX B (Continued)

department is precluded from invading the jurisdiction of another department such as by attempting to exercise any of the powers of the other. It is more difficult to define "adjudication" because that term has different meanings depending on the context in which it is used. It is incontrovertible that administrative agencies, on certain occasions, perform an adjudication function, and the various federal and state administrative procedure acts provide for specific procedures to be followed in agency adjudication. Thus adjudication can be viewed as a decision-making process that follows a particular form and includes most judicial proceedings as well as proceedings before non-judicial tribunals that are conducted in a manner similar to judicial proceedings.

Objectives of Separation of Powers Doctrine: Separation of powers has two pragmatic objectives: (1) fairness for the citizen when he deals with government or it deals with him; and (2) the diffusion of governmental power among several branches of government so as to prevent the concentration of power in any one branch. In light of recent developments in the law of "due process" it is suggested that the doctrine of separation of powers adds little, if anything, to assure fairness to the citizen. Due process is applicable to agency adjudications and the requirement for an impartial tribunal has been consistently regarded as an element of due process. Thus, any benefit to the citizen by way of fairness, which is secured by separation of powers, merely duplicates that which is protected under due process of law.

Decentralization of Power: The second aspect of the doctrine — decentralization of power — requires a more complex analysis. However, once the distinction between "judicial power" (in the constitutional sense) and "adjudication" is grasped, it is also clear that administrative adjudication may not violate separation of powers on this basis either.

The essence of judicial power in the constitutional sense is the responsibility for making the final determination of the

APPENDIX B (Continued)

constitutionality or legality of legislative and executive action. It is the power to say what the law is through interpretation and construction. It is the establishment of a forum in the judicial branch to which citizens may turn to secure ultimate protection from arbitrary governmental actions. But, as the late Chief Justice Vanderbilt of the New Jersey Supreme Court has stated:

"To the extent that the States have resorted to the use of such administrative tribunals for adjudication, the business of the State courts has been substantially reduced, but not their powers because of the constitutional right of an individual to secure a review of administrative determinations through the great prerogative writs or their modern substitutes even in circumstances where the legislature may not have provided for review."

Under this view "adjudication" is not "judicial power"; "adjudication" is a function of "judicial power," a manner in which "judicial power" may be exercised. It does not follow, however, that this adjudication function is exercised exclusively by the courts.

Other governmental bodies have consistently resorted to the adjudication device where it is an appropriate manner for exercising lawfully delegated powers. An administrative adjudication scheme for handling traffic violations established under appropriate legislative standards, reserving to the legislature the power to change the rules, and reserving to the courts the final power to correct administrative errors, provide for uniform interpretation, etc., and would not appear to invade either the "legislative" or "judicial" power.

The United States Constitution does not require the states to adopt separation of powers, yet the doctrine is more strictly adhered to in the states. Many state constitutions expressly provide for separation of powers; while in a minority of states, the courts have implied the doctrine, much the same as the federal courts have drawn the implication from the division of powers among the three branches of government.

## APPENDIX B (Continued)

Administrative adjudication has been permitted in varying degrees in the states. Some states recognize the appropriateness in vesting administrative agencies with judicial powers or with power to adjudicate. Many courts tolerate agency adjudication only in matters that can be classified as quasi-judicial. The term "quasi-judicial" often appears to be merely a label applied to agency adjudication and is applied in situations where an administrative agency uses a procedure similar to those used by courts to determine factual issues incidental to the promotion of specific legislative objectives. Agency action predicated upon the facts to be determined may involve the exercise of agency discretion or may, where action is mandated by the legislature, involve little or no discretion. The critical requirement in concluding that a proceeding is "quasi-judicial" is the link between the agency adjudication and the promotion of a particular legislative objective.

Approach to Sanctions: The key to the constitutionality of administrative adjudication of traffic violations may lie in the approach to sanctions. Courts have distinguished between administratively imposed sanctions and penal sanctions. Administrative sanctions are not intended to be regarded as punishment. Agencies do not try criminal cases and ordinarily do not impose incarceration as a sanction. Therefore, any scheme for administrative adjudication of traffic violations would require that these violations be decriminalized. However, sanctions other than imprisonment, such as fines, may be imposed by administrative agencies, although some states require that the precise amount of the fine be fixed by the legislature and not left to the discretion of the agency.

The imposition of a sanction by an agency that is tailored to the direct accomplishment of its objectives will meet with the least resistance in the courts. This more readily represents an example of an agency exercising "quasi-judicial" powers, especially where the agency exercises broad regulatory responsibilities in the particular area.



## APPENDIX B (Continued)

In the traffic area, sanctions such as compulsory driver education, suspension or revocation of licenses, since they are intended to promote traffic safety either by improving driver skills or removing highway menaces, would clearly be acceptable sanctions.

Process Used by Administrative Agency: The legality of agency adjudication often is dependent on the process followed by the agency. Criticism of agency adjudication is based not infrequently on claims that the agency has used unfair procedures. The late Roscoe Pond, former Dean of the Harvard Law School, criticized agency adjudication as it compared with judicial proceedings in that only judges are trained to look at both sides of a dispute and base their decisions on legal principals. Aside from the fact that in the United States we train lawyers — not judges — and lawyers could be and often are used as administrative adjudicators, Pond's conception of judicial justice more accurately reflects practices in serious criminal cases. Minor offenses such as traffic cases are more often handled in ways that are more characteristic of administrative practices rather than judicial procedures. Furthermore, there is no reason why administrative adjudications could not be subjected to the "record" and "judicial review" procedures applicable in the judicial system. Finally, due process is applicable to agency adjudication and can be relied on to insure procedural fairness.



## APPENDIX C

### PLANNING HORIZONS, MEASURING ECONOMIC ATTRACTIVENESS, AND RELATED ISSUES

The technical approach used in conducting a benefit-cost analysis of administrative adjudication should employ the traditional techniques used for these types of analyses. In this sense, there is nothing unique about the analysis of administrative adjudication. While a discussion of these concepts is beyond the scope of this document, the following points should be considered:

Incremental Benefits and Costs: By far the most common mistake made in benefit-cost analyses, and a mistake that is quite easy to make when analyzing administrative adjudication, is to fail to identify the true incremental costs or benefits. For example, if one is attempting to estimate the dollar savings associated with the reduction of a certain number of clerical positions in the courts, it is probably incorrect to use the "average cost per employee" as the basis for the estimated reduction. More likely, this would be an upper bound on the cost reduction that could be expected. Unfortunately, examining incremental costs can be quite difficult. Where incremental benefits and costs cannot be identified, sensitivity analysis should be employed to examine the effect of the potential error.

Realizable Dollar Savings versus Changes in Service Levels: Presenting the results of the study may involve distinguishing between these two types of benefits. For example, if a system of administrative adjudication is introduced which causes the deferred hiring of judges and simultaneously frees judge time for backlog reduction or other functions, there will be both changes in service levels and realizable dollar savings. The realizable dollar savings result from the deferral of salaries while the increased free judge time has no realizable dollar savings associated with it. However, the freed judge time does have a

## APPENDIX C (Continued)

monetary value which can be claimed as a benefit if it is assumed that the freed judge time is spent in a useful function. From the standpoint of local governmental entities, however, there must be a clear separation between those benefits which are realizable in dollars and those which result in improved service levels. The latter should be presented in the study findings but cannot be included in the cash flows over the planning horizon for the project.

Adoption of an Appropriate Planning Horizon: The typical rules for picking a planning horizon over which benefits and costs are to be estimated include "to the point beyond which it is impossible to reasonably estimate the benefits and costs," or "to the end of the useful life of the option being examined." In the case of administrative adjudication, it would probably be unreasonable to adopt a planning horizon of much less than five years or much greater than 20 years although there very well may be exceptions. The length of the planning horizon assumed in the analysis will very significantly affect the perceived economic attractiveness of the system. Accordingly, some sensitivity analysis on the length of the planning may be appropriate.

Measures of Attractiveness: The appropriate measures of attractiveness may include net present benefits, rates of return, annualized benefits, or benefit-cost ratios. All of these measures require the discounting of the cash flows (both benefits and costs) over the planning horizon since the alternatives will have significantly different cash flow characteristics. The analyst should also keep in mind that a benefit-cost ratio is a measure of attractiveness relative to "doing nothing" and as such cannot be used to rank order the attractiveness of more than two competing alternatives. Failure to examine the incremental benefits and costs when using the benefit-cost ratio approach is a very common analytical mistake and one that can easily be made with regard to administrative adjudication. Since most decision-making bodies cannot be expected to understand the concept of "net present benefits" based on the discounting of cash

## APPENDIX C (Continued)

flows, perhaps the most preferable way for expressing the results is in "annualized benefits" followed by "rate-of-return."

Use of Sensitivity Analysis: Sensitivity analysis was extensively employed in the California feasibility study for two purposes: First, it was used to determine to what extent limited study resources should be applied to each of the many cost or benefit estimation problems involved in the study. Where it was found that the issues had little impact on the "bottom line," relatively little resources were allocated to the issue. Secondly, sensitivity analysis was applied to the final conclusions as to the economic attractiveness of the alternatives. This was done by assuming that large errors had been made in estimating both costs and benefits for most of the important elements of the study. In this way, for example, it was possible to show that even if a 50% error had been made in estimating the benefits derived from clerical personnel changes in the courts, administrative adjudication was still more attractive than the present system. This type of analysis not only improves the credibility of the study findings but also shows where special caution must be taken to analyze costs and benefits during a pilot or demonstration study.

The exhibit on the following page shows the results of a sensitivity analysis of certain assumptions made in the California feasibility study.

APPENDIX C (Continued)

EXHIBIT C-1

Results of Sensitivity Analysis on  
California Economic Impacts

Assumptions	Net Benefits (1)	Benefit Cost Ratio (2)	Rate of Return (3)	Annualized Benefits (4)
Best estimate as reported in summary of study	\$72.5 Million	2.03	71%	\$7.7 Million per Year
No increase in revenues under proposed system	\$59.0	1.84	62%	\$6.3 Million per Year
Operating cost 30% higher than estimated	\$51.4	1.56	49%	\$5.5 Million per Year
All court-related savings reduced by 25%	\$46.1	1.65	55%	\$4.9 Million per Year
Non-judicial court savings reduced by 50%	\$31.4	1.45	40%	\$3.3 Million per Year

- (1) Discounted net cash flows over 21-year planning horizon.
- (2) Ratio of discounted positive cash flows to discounted negative cash flows.
- (3) The interest rate at which the net (discounted) present worth of all cash flows is zero.
- (4) Annualized version of net benefits.

## APPENDIX D

### JUDICIAL ATTITUDE SURVEY

The attitudes of the judiciary toward administrative adjudication have been surveyed in several studies.

The following twelve questions were used to assess the attitudes of judges to a proposed administrative adjudication system for the State of California (California Feasibility Study, Vol. I., p. 181 ff.). While the study was of insufficient scope to provide a statistically definitive description of the judiciary in California, the results are believed to be representative. Both the questions asked, the possible responses, and the actual responses are summarized as an aid in designing a similar questionnaire in other jurisdictions. The summary also makes certain comparisons between the response of judges and court clerks to similar questions.

1. Do you believe the Department of Motor Vehicles could process traffic infractions as well as the courts do?

Yes	38.83%
No	56.31%
No response	4.85%

2. The practical problems with administrative adjudication are that it might:

(1) Duplicate existing facilities	21.94%
(2) Abrogate the defendant's rights	37.42%
(3) Provide too much information on the driving record to insurance companies	9.68%
(4) Make people less concerned about their driving record	12.90%
(5) Other	10.32%
(6) No response	7.74%

APPENDIX D (Continued)

Some of the "other" responses were: (a) It violates the separation of powers, (b) Administrative agencies are by nature inefficient, (c) Too bureaucratic, (d) Impersonal administration of justice, (e) Public inconvenience, (f) Less respect for traffic laws.

3. Do you believe a non-attorney with the proper legal training could effectively adjudicate traffic infractions?

Absolutely	17.48%
Probably could	45.63%
Doubtful	16.50%
Probably could not	19.42%
No response	.97%

Responses to this question by court clerks and judges differed significantly. Seventy-eight percent of the court clerks believe a non-attorney could effectively adjudicate traffic infractions compared to 63% of the judges. Interestingly, the public prefers a non-attorney (74%).

4. Do you believe the effectiveness of the courts could be improved if parking and traffic infractions were removed?

Yes	55.14%
No	43.69%
No response	.97%

5. What do you believe would be the effect on the quality of justice for the defendant under the new system?

More just	1.94%
No effect	30.10%
Less just	63.11%
No response	4.85%

The response pattern on this question differed significantly between the judges and court clerks. Twenty-five percent of court clerks believe that the new system would be more just, while 34% believe it would be less just.



APPENDIX D (Continued)

6. Do you believe the new system has a potential for enhancing traffic safety on the highways?

Yes	23.30%
No	69.93%
No response	7.77%

7. What do you believe is the appropriate burden of proof for deciding minor traffic infractions in an administrative setting where there is no possibility of jail as a sanction?

Proof beyond a reasonable doubt	46.60%
Clear and convincing evidence	33.98%
Preponderance of the evidence	18.45%
Substantial proof	.97%

8. Do you believe juveniles should be treated in the same manner as adults for moving violations?

Yes	75.73%
No	23.30%
No response	.97%

This question was also asked in the public attitude survey which showed a "yes" response of 80.91%.

9. Do you believe sentences and procedures for traffic offenders should be uniform throughout the state?

Yes	77.82%
No	27.18%

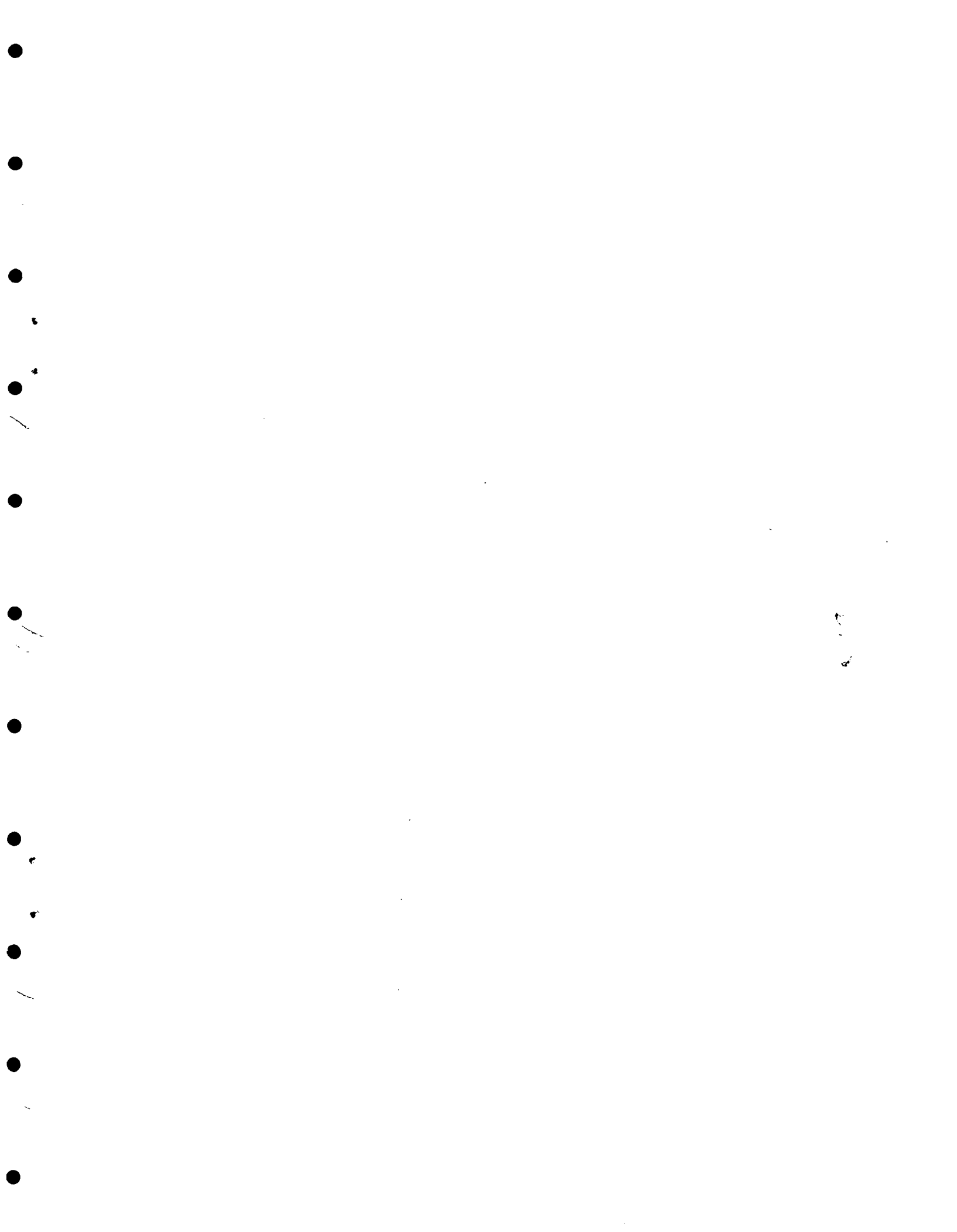
A similar question on a public attitude survey showed an overall "yes" response of 67.24%.

10. When the judges were asked about the disposition of the fine or violation when a traffic offender is sent to traffic school, 88.50% of the responses indicated that the violation and/or fine was suspended, dismissed, or reduced.

11. Of the judges sampled, 80 or 77.67% indicated that statewide driving records are available to them. Only 22 or 21.36% indicated they were not available.

APPENDIX D (Continued)

12. Ninety-three of the 103 judges surveyed believed that a review of a person's driving record is important when assigning a sanction for a traffic infraction. Nine or 8.82% of the respondents did not believe it was important.



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