

Winter 1940

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Recommended Citation

Harry H. Porter, *The Traffic Court System*, 31 *Am. Inst. Crim. L. & Criminology* 401 (1940-1941)

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THE TRAFFIC COURT SYSTEM

Harry H. Porter¹

INTRODUCTION

I

The Problem

Last year, upon the streets and highways of this nation we beheld the spectacle of an entire city being destroyed by the automobile; a city, if you please, the size of Richmond, Indiana; Rome, New York; Great Falls, Montana, or any other of a number of fine American cities. 32,600 deaths, occurring singly and in small groups, in widely separated localities, from one cause, in the course of one year, and this occurring year after year in this country since the year 1920, ought to have provoked some real thought upon the part of all of us.

Although the automobile death toll annually amounts to some six and one half times the total loss of human life experienced in the nation's worst peacetime catastrophe, nevertheless we have been going merrily on making of America a nation of cemeteries and cripples and, even as yet, there is an insufficient unanimity of public opinion so that a mighty constructive movement can get under way to end this daily threat to human life.

In the nineteen months of America's participation in the world war there were killed in action and died of wounds among the American forces upon the battlefields of France, 50,510 Americans. In the nineteen month period ending

December 31, 1939, there were killed by automobile upon the streets and highways of this country 53,400.

Last year, upon the streets and highways of this nation, there was maimed and injured by the automobile a city the size of Detroit, Michigan; a city the size of Omaha, Nebraska, received personal injuries from this one source which were permanent and life-long in character.

During the nineteen months of America's participation in the world war there were wounded in action among the American forces upon the battlefields of France, some 234,300. During the nineteen month period ending December 31, 1939 there were maimed and injured by the automobile upon the streets and highways of America, 1,850,000 or almost eight times as many.

It is quite apparent, therefore, that we have a major war going on right here on American soil. It is estimated, furthermore, that the 3,600,000 automobile accidents which occur annually on our streets and highways are thrusting an economic burden upon the American people of \$1,740,000,000, or more than enough to defray the cost per annum of the entire public school system of the nation.

How many of these accidents are traceable directly or indirectly to a vio-

¹ Judge of the Municipal Court, Evanston, Ill.

lation of the traffic regulations upon the part of some person or other I suppose it will ever be impossible to accurately ascertain, since statistics upon open highway accidents have been and are notoriously incomplete and in many instances are unreliable. As accurate a set of figures as have been gathered within the cities, I suppose, are those which have been gathered by our own Bureau of Accident Prevention at Evanston, where it is estimated that better than fifty per cent of all traffic accidents are caused by a violation of the laws by some person or other.

Many, many times, I have heard these defendants brought in by the police into my own court, extolled by their counsel and by their friends as "fine people," "one of our best citizens," etc. I have no quarrel with those who so extol them, but the fact remains that the head of a family who is killed by an automobile in the hands of a careless driver is just as extremely deceased and his family is left just as unguided and unprotected as though he had been killed by a machine gun in the hands of a dangerous criminal. The automobile is daily taking a far larger toll of life and limb than all the weapons in America.

The motor car manufacturers and accessory makers have equipped the modern car with every vital safety device which the inventive mind of man has been able to produce. Most cars today have safety glass, safety brakes, safety tires, anti-skid chains for safety in Winter, safety wheels, safety this and that, and yet, I suppose it will always be impossible to improve mechanically upon the "nut" behind the wheel. If he fails

to respond to voluntary education as regards maintaining the vehicle in a safe condition or obeying traffic laws made by his fellow citizens, then he becomes the problem for our police, our prosecutors and our courts.

II

The Condition of the Courts

There can be no doubt that a substantial problem vitally affecting America exists, and there can be no doubt that in arriving at a satisfactory solution the courts must play a most important part. There can be even less doubt, after eleven years experience with the problem in which the three Es—Education,—Engineering,—and Enforcement have figured prominently, that traffic law enforcement represents the largest and most important E of the three.

In my own city, since 1929, with the exception of a short interval, we have kept a chart showing the effect of traffic law enforcement upon the accident rate. (I have had this chart mimeographed for your inspection). This chart shows that the accident rate varies in almost inverse ratio with severity of enforcement. Each time enforcement has become unusually severe the accident rate has declined and vice versa. And yet there have been drawbacks and discouragements.

Our court in Evanston is a Municipal Court with jurisdiction of all crimes below the grade of felony. Its type of construction was set up in Illinois before there was a traffic problem, and while traffic violations fall within its jurisdiction, it is not, in any sense, a true traffic court; moreover, the procedure prescribed by law for it amounts, in

many respects, to a real handicap in serious traffic law enforcement. I mention our local court only for the purpose of calling your attention to a situation which is very general throughout the cities of the nation.

Generally speaking, we are as unprepared in America to handle this major war of life saving, so far as our equipment and prescribed procedure in the courts is concerned, as France was to handle the recent German blitzkrieg and, admittedly, the job of overhauling and revamping our court system so as to make it adequate to the problem in hand will require as much time as building a two ocean navy, and as much titanic effort as prying funds from a legislative body. And yet this job must be done and the more quickly a start is made the more quickly can the job be completed.

To be effective, the units of enforcement must be co-ordinated; the work of the police must be sympathetically understood and received by both the prosecutor and the courts—they must both become traffic accident minded—and the police must be quick to cooperate thoroughly with the serious efforts of the other two agencies. Please note that I am not advocating that the courts should become prosecuting agencies, in any sense of the word, but a consistent failure on the part of our traffic judges to cooperate sympathetically with a well intentioned, balanced, intelligent and serious police program of accident prevention will produce a ruined police morale which will end the accident prevention program in any community.

Laws and the Traffic Court

One of the great obstacles to good traffic law enforcement in America, as your committee's survey verified (I say verified because it has been obvious for years to all Americans) is the great diversity in the statutory law varying from state to state, from city to state and from city to city within the states. How difficult must be the job of a Miami, Florida, or Washington, D. C. traffic judge who is daily faced with defendants trained to a thousand different rules and regulations and coming from a thousand cities in forty eight states of the nation. And yet this same difficulty is encountered in a somewhat lesser degree by any other traffic judge because of the extreme mobility of persons and property brought about by easy and quick modern day automobile transportation.

Single currency and coinage regulation and uniform bankruptcy laws have prevented annoying problems in these fields and yet nothing is more interstate than today's automobile transportation. Granted that the states should retain the right to regulate motor traffic within their respective borders, a real effort should be made to standardize these laws so far as possible, and to bar cities and towns from enacting legislation at variance with or in substantial duplication of their own state laws. The number of traffic laws should be as few as possible and these few should be written as clearly and simply as possible, and widespread publicity given them; and, above all, these few clearly and simply written laws should be thoroughly and

impartially enforced consistently, day in and day out.

The Courts Which Try Traffic Cases

The study has revealed that the courts which try traffic cases are even more diverse in their construction, jurisdiction, processes and procedure than are the traffic laws. We find the justice of the peace handling traffic violations in some states, while in some of the more enlightened jurisdictions they have been deprived of this right. In still others, the justices are used only when some other court of competent jurisdiction is not available. A system which causes the police to "shop around" for court cooperation in an accident prevention program is certain to cause a suspicion and an adverse reaction from the public.

Although experience has shown that the court of record is a more satisfactory forum than is the justice for the trial of traffic cases, principally because of its much higher type of personnel and its wider jurisdiction, nevertheless, there are substantial objections to the use of these courts as traffic trial courts, in many instances. There is a clear cut tendency upon the part of judges accustomed to handle the serious criminal offenses to disregard the importance of the traffic case. In the existing court of record class, the Municipal Court has generally been found the most satisfactory court for traffic causes, chiefly because a large proportion of the business which comes before these courts consists of traffic cases and therefore has encouraged some adaptability for the trial of these cases, and still we find that in over 40% of the cities no attempt is

made to segregate the traffic business from other business of the court.

The traffic case is perhaps the most quickly disposed of all criminal cases; the usual plea is one of guilty eliminating the necessity of an extended hearing; if an issue is made it is usually a simple one; witnesses, generally are few and their stories are short; yet the organization of the court must be unlike that of any other type of court for an efficient job to be done. The judge ought to be a specialist; the record system should be so framed as to permit maximum efficiency and availability of information; the system and type of punishment are perhaps peculiar to that particular type of court alone.

I believe that sooner or later the punishments administered in the traffic courts will consist, almost entirely, of a system of license suspensions and revocations rather than the fine which has been the weapon of the ordinary criminal courts. Of course, the jail sentence for the more serious violations will undoubtedly be preserved for a long time to come.

Because of the peculiarity of the traffic case, the special types of punishments to be administered, the extra-ordinary record system necessary, the specialized routine and the unique type of training desirable in the personnel, there can be no doubt that the familiar criminal court, so well known to us, cannot possibly do the job and that America needs, for efficient handling of this immense problem, an entire new set of courts adapted especially to this work.

Your committee has not been unmindful of practicality in making this rec-

ommendation and is fully aware of the cost of such an improvement and, realizing full well the enormous cost, it is insisted that the figures will be dwarfed when compared with the loss that our grossly inefficient system of handling traffic cases of today permits to be visited upon the nation.

Availability of Traffic Courts

In terms of availability of courts a traffic arrest in the heart of New York City is one thing, and an arrest in the southern California desert is another. The desert violator is at an enormous disadvantage because he must travel back a tremendous distance and then wait over or post and forfeit a bond, or return for trial. So also is the case of the transient violator who is apprehended after court hours. If the violation is of the type which ought not to be handled in the violations bureau and is not of the type covered by a severe statutory penalty an unusually difficult problem is presented which defied a genuinely satisfactory solution. It has been suggested that, in such case, the violator be permitted to plead his case by affidavits, a most unsatisfactory course.

In recommending a state wide system of traffic courts under one chief justice, and divided into district courts allocated on a population basis, from which circuits are to emanate, your committee has had regard for flexibility; the removal of local pressure from the judges; the far reaching effect of the court's process; the convenience of the transfer of cases when necessary, and, above all, the psychological reaction of the public which has a great deal more confidence in and

respect for the state court than for the local courts. Such a state court, incidentally, could do much to eliminate the difficulty and inconvenience of the transient motorist about which I have just spoken. In addition, such a court would eliminate the tendency of local bodies to determine bookings in traffic cases solely with an eye to revenue. In thousands of places in this country today drunken drivers are booked as disorderly in order to retain the fines in the local treasury.

Costs

Disregarding the iniquitous fee system, the matter of costs has had a decided effect upon enforcement of the traffic laws. It is obvious that there will be a natural reluctance to enforce laws pertaining to minor offenses, for instance, where costs fixed by statute are far in excess of a reasonable fine for the offense. The costs system, if it is to be retained at all, should be made flexible so that it will be possible for the courts to avoid injustice.

Physical Facilities and Clerical Aid.

The study has indicated that in forty two cities of over 100,000 population, over 40% of all criminal arrests were for traffic violations and that this number is increasing. Since the traffic court is the only court our average citizen comes in contact with, his opinion of the court system generally is apt to be obtained from his impressions gained there. Mr. Warren's personal study of the physical facilities of the traffic court rooms of the nation has revealed the shocking inadequacies and deficiencies apparent to

the visitor. Many court rooms were found to be crude and unpainted, dirty and with dank odors prevalent, and almost none were ideally suited for the proper handling of the court's business.

The loss of efficiency, brought about by these defects is not, by any means, the most important loss to the community; it is the psychological reaction of the public to "justice dispensed in a barn." Although it will always, perhaps, be impossible for the busy traffic court, because of the quick turnover of cases, the large number of parties accompanied by constant motion and shuffle, and the necessity of the clerk raising his voice, to present the dignified appearance expected of a criminal court, nevertheless the physical attributes of the court room should not be so far neglected as to work at cross purposes with the occupant of the bench. I have always maintained that the proper time to teach a defendant respect for the traffic laws is the first time he appears in court. If he is duly impressed with the majesty of the law at this time you have gone a long way to cut him from the ranks of the repeaters. I am old fashioned enough to persist in the belief that the regalia of the English judge and the pomp and ceremony attendant upon the opening of court all have a psychological effect upon the violator calculated to accomplish fully as much as the actual passing of sentence. Certainly any attempt to be dignified on the part of the traffic judge and court officials in one of our average American traffic court rooms is ludicrous when the physical surroundings are taken into consideration and, at the best, the average defendant can

carry away only a very poor opinion of the American judicial system.

Mass production methods, made necessary by shortage of personnel and disgracefully poor equipment and quarters tend to give the impression that the courts, in imposing fines, are extorting license fees for the particular violations involved, rather than seeking to impress upon the violator the seriousness of his violation and the importance of refraining from repetition of the offense. A liberal investment in proper quarters, equipment and personnel will pay unusual dividends in an increased respect for law enforcement generally.

Violations Bureaus.

The violations bureau, sometimes referred to as a "cafeteria court" has come to have a definite place in the traffic court scheme. It has been created to relieve the pressure of business in the traffic court proper and, if properly set up and administered is a material aid in disposing of large volumes of business.

The survey reveals, however, numerous types and styles of bureaus, and, in many instances, bureaus were found wholly unconnected with the courts, being handled by the police departments exclusively. Obviously, where the total volume of business is capable of being handled in open court efficiently there is no occasion for the bureau and, emphatically, none should be set up. Secondly, only the overflow business of the court proper should be handled in the bureau, and this overflow business should be confined to non-moving violations and certainly to not more than the less dangerous mov-

ing violations. Dangerous violations, under no circumstances, should be treated in the cafeteria courts, and when this type of violation gets into the overflow another court should be provided.

The fixing of the amount of a fine is a strictly judicial act and obviously the fixing of a standard scale of cafeteria fines should not be left to a clerk or a police officer, nor should any discretion be permitted to exist in the clerk who receives the fines. These cafeteria fines, it is recommended, should be in the same amounts as used in open court for the same offenses, for the encouragement to use the cafeteria court is found in the convenience of disposal. In most of these bureaus it is possible for the violator to mail, bring or send the fine into the bureau.

It was found in many instances that no record was kept of repeaters, the usual plea being lack of clerical help. Under such circumstances, the acceptance of the fine over the counter smacks of a licensing system for violators and such practice should by all means be discouraged. In many cases no plea of guilty or waiver of trial was presented with the payment and it is felt that in such cases the primary purpose of the enforcement was lost, namely; the discouragement of repetition.

In the administration of the violations bureau one of the important difficulties is compelling appearances. It was noted that in those bureaus which failed to follow up defaults with the prompt issuance and execution of process the enforcement of the law seriously lagged; the number of appearances was few and

public respect for the law varied in direct proportion to the follow up effort.

The committee believes that there is a place for the violations bureau which is properly set up and administered in the court system.

Traffic Judges.

Although the traffic court has, unfortunately, been considered inferior in the hierarchy of the courts, nevertheless for an efficient piece of work to be done it requires the services of a specialist on the bench. He must forever keep in mind the safety and convenience of the public and must be able to distinguish instantly between the purely technical offense and that which ultimately affects the public safety. To handle this important work properly he must have a substantial knowledge of traffic engineering principles and of traffic policing and a general understanding of the safety work in addition to his legal background.

The defendant who goes to trial in the average traffic case does so before a virtual despot. His guarantees depend on the type of individual who presides at the trial. The survey revealed that appeals from the judgments of the traffic courts are almost never taken, which is another indication that our present court system is not suitable for the handling of traffic cases.

Now who are these despots who rule the traffic courts with an iron hand? The studies indicate that they are both elected and appointed; in large and in small voting districts; by statewide and by local authority; and their terms of office range from indefinite to ten years.

The system which seems to insure the highest grade personnel is the appointment by executive authority on a state-wide basis unless the appointment is dictated by local political machines, in which event election based upon the largest political unit possible becomes preferable. One point worthy of note is that there seemed to be general dissatisfaction no matter what system was used.

Many of the larger courts have a system of rotating the judges and this seems to be most unsatisfactory from the traffic court standpoint and provokes an unusual number of requests by defendants for postponements in order to get the case before a certain judge for disposition and thus ensure sympathetic treatment for that particular defendant. It cannot be too strongly urged that the best traffic judge possible be placed on the traffic bench and kept there without change of assignment and that the best possible alternate be kept in readiness for emergency duty. In instances where this has been the practice the accident record of the community has reflected the contention that this is the best possible practice.

Prosecutors.

It was found, strangely enough, that in many instances the desirability of using a prosecutor for the trial of traffic cases was seriously questioned. This seems inconceivable, because the value of a prosecutor in this work seems patent and obvious to one with only a limited experience in the safety field.

The effort of a conscientious prosecutor is to bring out the evidence for both

sides in full and with the utmost possible expedition. Because of the fact that defendants in traffic cases are rarely represented by counsel unless the offense is one of gravity he should act both as attorney for the state and for the defendant, seeking to expose the facts to the court impartially. He can also be extremely helpful in preparing the calls in such way as to save time and inconvenience to the public and the police. He will also act in a measure as legal adviser to the police and will save much time to them and to the court by determining the proper bookings based on the available evidence.

The traffic court prosecutor should not strive for convictions entirely, but for the creation in the mind of the defendant of a cooperative attitude which will insure against conscious repetition of the offense.

Your committee has recommended against the prosecutor acting in a pre-trial capacity in traffic cases except for the guidance of the police in proper bookings. This has been done because of the fact that the average traffic arrest takes place on the scene of the violation and there remains only a question of the weight of the evidence to be determined by the court. It is felt that the prosecutor's power to nonsuit and to enter the nolle prosequi, subject to the supervision of the court, is sufficient and that the power to determine who shall and who shall not be charged with traffic violations may be subject to abuse and may create a dangerous situation with respect to law enforcement and police morale.

Defense Counsel.

Ordinarily the traffic defendant appears without benefit of counsel. The average penalty imposed in the ordinary traffic case is insufficient to warrant retention of counsel and thus we find defense counsel engaged only in defending the more serious violations such as drunken driving and others in which the driving license is in jeopardy.

It has been found that the reason for the retention of counsel in traffic cases in many instances is chiefly his bargaining ability and influence in having charges reduced and waived. Lawyers who act in this capacity generally have little conception of the safety problem and do not realize the extent of the damage done the public by such activity. This situation can be vastly improved by interesting local bar associations in the safety problem generally and where this has been done attorneys have quickly cooperated and saved the time of the courts by entering pleas of guilty in proper cases.

Another difficulty which has been experienced due to the infrequent appearance of counsel in the traffic courts, is the basing of defenses upon civil doctrines such as contributory negligence, last clear chance, etc., failing to recognize the criminal aspect of the case and that the only question to be determined is whether defendant committed the vio-

lation or not. The courts themselves can assist in clearing this difficulty by occasional talks before the bar associations at their regular meetings.

Conclusion.

The traffic accident problem is vitally affecting the lives and the happiness of all human beings in America. In its proportions it is the equivalent of a major war of the nations which must be fought with modern weapons and with an enlightened understanding of the problem both from the practical and the psychological angle.

The groups represented here in this room are being presented with the first panoramic picture of what is happening in those courts which will play the most important role in its solution. Infinite good can come to the nation by a recognition of the facts and an aggressive attitude toward the problem on the part of those here present. Your committee and each member thereof is vitally interested in the safety work and is proud of the opportunity you have given him to participate in this important work. We are all grateful to you for your valuable interest in this problem; to Automotive Safety Foundation for its interest and financial support in this work, and to Mr. Vanderbilt and to Mr. George Warren who have presented to you such a splendid report.