FIRST SESSION

JAMES K. WILLIAMS, *Director*
Office of Highway Safety,
Bureau of Public Roads, Presiding

LAW, PUBLIC POLICY AND THE ADMINISTRATIVE PROCESS

EDWARD SCHEIDT, *Commissioner of Motor Vehicles*
State of North Carolina; President
American Association of Motor Vehicle Administrators

The broadly stated purpose of this colloquy is to present a perspective for a better understanding of the impact which laws and administrative practices relating to the ownership and use of motor vehicles have had and will continue to have on the economy and society of this country, upon engineering technology, and upon the development of a truly safe and efficient system of highway transportation.

Louis R. Morony, in his report to the Committee on Motor Vehicle and Traffic Law, stated that despite the fact that laws regulating ownership and use of motor vehicles directly and substantially affect the lives of most of us, little actual research has been done in this area.

I find myself in agreement—reluctant agreement—with Mr. Morony's conclusions. I say reluctant, not because I have reason to disagree, but because I hate to admit that he is right. I hate to have to admit that, in most part, much of the present regulation of the ownership and use of motor vehicles is based on empiricism This is not an indictment of present motor vehicle law and administration, but rather to lay the predicate for a review of the role which law, administration, and the administrative process play in the regulation of motor vehicle ownership and use, and to highlight the need for applied research in the motor vehicle area.

LAW AND PUBLIC POLICY—A REVIEW

The role of the law in this automotive age has been discussed by Dean Nutting. This is good, for knowledge of the legal framework into which motor vehicle law has been fitted and within which it must operate is basic to any understanding of the regulation of the motor vehicle function. It is basic to any understanding of motor vehicle administration. It is basic to any understanding of the administrative process.

At the risk of poaching on Dean Nutting's preserve, however, and with a considerable degree of trepidation occasioned by my own presumptiveness in daring to do so, I want to review briefly some of the history of governmental regulation as it has affected the conduct of individuals and the use of their

First Session *(left to right): Alan M. Voorhees, Alan Voorhees & Associates; Arnold Wise, New York State Motor Vehicle Department; Glenn Carmichael, American Association of Motor Vehicle Administrators (representing Mr. Edward Scheidt); James K. Williams, U. S. Bureau of Public Roads; Carl McFarland, University of Virginia Law School; Joseph Hennessee, American Association of Motor Vehicle Administrators; Edward Rockwell, Automobile Club of Michigan; and Fletcher Platt, Ford Motor Company.*

property and to try to fit such regulation into our present scheme of things. If I appear to oversimplify, bear with me, for time permits me to paint only with the broadest strokes of the brush.

Long ago, before the memory of any of us present, governmental regulation was relatively simple and unoppressive. Such regulations as we had were usually enforced through criminal penalties for specified antisocial conduct. In this relatively simple society it took a conscious intent to commit crime. There had to be a guilty mind, a wrongful purpose, a criminal intent, a conscious purpose to do wrong. These prohibited actions—regulations, if you like—were said to be *malum in se,* inherently and essentially evil and immoral in their nature and injurious in consequence without regard to whether noticed or punished by the state. These survive today as our typical Common Law crimes. Enforcement of these Common Law crimes, then as now, was aided by censure of the body public as well as by the body politic.

Civil penalties, I have been told, were imposed for some types of prohibited conduct not considered to be criminal in nature. Redress for private wrongs was through actions in tort or contract.

Somewhat later perhaps, but roughly parallel, was the development of another class of prohibited conduct, also categorized as criminal, which constituted a crime, not because the conduct was inherently wrong or evil but because it was prohibited by public policy as expressed in the statutes. These statutory crimes we describe as *malum prohibitum.* That is to say, such conduct is made criminal, not by its inherent evilness, but because it has been prohibited by statute. Public censure, a positive deterrent to the violation of Common Law regulation, has

been something less than effective as a deterrent to the violation of statutory rules and regulations.

Conduct prohibited by statute is made criminal without regard to any intent to commit. Most motor vehicle violations, unknown to the Common Law, fall into this category. Thus, for example, a man who inadvertently drives his automobile without proper registration is equally guilty with one who does so consciously and deliberately. One who unknowingly drives without proper headlight equipment, equally with one who does so deliberately.

There are some who say that it is unfortunate that we have chosen to enforce our motor vehicle regulations, especially in the registration, size, weight, and equipment areas, through imposition of criminal penalties. There are some who say that violations of motor vehicle regulations, including regulations affecting the speed and movement of vehicles, have been made criminal by historical accident, through necessity, if you will, of having to fit them into our existing legal pattern. They say that motor vehicle violations are not truly criminal; that they fall short of being crimes; that they should be removed from the criminal category and be redesignated as something lesser, perhaps even as civil violations.

The late Chief Justice Vanderbilt of New Jersey did pioneer work in this area. In recent years, both New Jersey and New York have pioneered by reclassifying some motor vehicle violations as motor vehicle offenses—a new category of conduct which falls short of being criminal. This is currently being considered by an interim legislative study group in North Carolina.

This I discuss with you, not to express any opinion of my own, but rather to acquaint you with a question that could affect the whole spectrum of motor vehicle law, policy, and administration.

It can, perhaps, be said that motor vehicle administration has its beginning and its ending in the law, and that statutory law constitutes public policy as expressed by the legislature.

This may be an oversimplification. Nevertheless, it is important to remember that under our system of government the power to regulate the conduct of individuals and the use of their property is vested exclusively in the legislature. Our courts universally agree that no parcel or part of this legislative authority can be delegated to a nonlegislative body.

While our courts are agreed that no part of the legislative power may be delegated to any nonlegislative body, they are in something less than agreement as to what actually constitutes such a delegation. In recent years, through necessity, it seems to me, the courts have shown a tendency to be much less strict in their interpretation and application of the nondelegation rule. In fact, our courts are becoming increasingly liberal in their approval of the delegation of some degree of rule making power within specified limits spelled out in the statutes.

It may come as a surprise to you—it reportedly has come as a surprise to some motor vehicle administrators—to learn that motor vehicle departments, like other governmental agencies, possess no inherent powers of their own. They are purely creatures of the legislatures, created by statute to administer and give force and effect to public policy as expressed in or limited by statute. To put this another way, the measure and extent of a motor vehicle department's authortiy is to be determined by the specific authority granted by the statutes,

not, as some opinion indicates, by the scope of authority not expressly denied to them by statute.

MOTOR VEHICLE ADMINISTRATION—THE ADMINISTRATIVE PROCESS

We have said, and I think we are in agreement, that motor vehicle administration and the administrative processes have been superimposed on, if not fitted into, our existing legal system. They must be considered in this context. I express no present opinion as to the adequacy of this system in relation to the function of the administrative process.

It is difficult, if not impossible, to give a capsule description of the role of motor vehicle administration as we know it today. Trying to describe even the scope of motor vehicle administration is closely akin to the attempt of the three blind men to describe an elephant through their sense of touch. Ask any person here to describe motor vehicle administration, and he will first describe that part he has touched, or more specifically, that has touched or affected him. It is even more difficult to give a capsule definition of the administrative process. I will not attempt to do so. I will, however, present to you some actual problems in motor vehicle administration as they exist today.

In scope, motor vehicle administration covers all aspects of motor vehicle ownership, operation, and use. It can be said to begin with the licensing of automobile dealers and proceed through registration and certificate of title; driver control through driver license procedures; financial responsibility, including compulsory insurance; vehicle inspection; equipment approval; antitheft; traffic law enforcement; accident investigation, and central records. Ideally, we think, these related functions should all be grouped together in a single department under one administrative head.

Motor vehicle administration can be divided into three broad categories: regulation, service, and production. A further category, enforcement, could be added.

Most people, even knowledgeable ones, tend to overlook the importance of the service and production functions. Considering the service function, several examples will suffice to illustrate this point. First, in the area of registration and certificate of title, this service gives protection to both buyer and seller, provides an indication of ownership, and imparts a ready negotiability to automobiles.

Many services are performed in driver licensing. Examinations are scheduled; license certificates, both new and duplicate, are supplied; driver records are maintained and made available to interested parties; driver training courses are provided for beginning drivers; driver improvement counseling and training is provided for problem drivers.

Financial responsibility, including compulsory automobile insurance, provides a source of recovery for injury to persons or property and seeks to insure that drivers who cause accidents will bear the ensuing financial losses.

Most of the work of a motor vehicle department is taken up with a daily production job. In North Carolina, for example, approximately 200,000 new registrations and certificates of title must be processed each year. Annually over two million registration renewal notices must be prepared and mailed. Over two million registration plates must be made. Most of these must be distributed within a period of two months. Insurance records must be kept on each automobile registered in the state.

Approximately 75,000 new drivers must be examined each year. Each of our more than two million licensed drivers must be re-examined each four years. Records must be kept on each driver. Thirty-two driver improvement clinics must be staffed and maintained. Driver education training courses must be provided for 16- to 18-year-old youths who do not have access to such courses in the public schools. The logistics of this operation—and North Carolina is only in the middle workload bracket of states—is tremendous.

The foregoing would seem to make the role of motor vehicle administration seem simple, despite the volume of work involved. It might suggest to the uninitiated that the motor vehicle function is purely ministerial; that the administrative process consists largely of putting into effect well defined and adequately spelled out law or public policy. This is not so. To illustrate, let us look briefly at the role of motor vehicle administration in two areas of regulation and control. For our purposes we will consider the administrative role or the administrative process involved in the licensing of drivers and in discretionary license suspensions. For purposes of uniformity, we will refer to applicable provisions of the Uniform Vehicle Code.

Section 6-101 of the Uniform Vehicle Code prohibits the operation of a motor vehicle without a license. Section 6-102 contains a list of persons exempted from this general license requirement. Section 6-103 lists those who cannot be licensed. Section 6-110, the keystone statute, requires the department to examine every applicant for a license to drive. Such an examination must include a test of the applicant's eyesight, his ability to read and understand highway signs and signals, his knowledge of traffic laws, and an actual test of his ability to exercise *ordinary* and *reasonable* care in the operation of a motor vehicle.

This is your legislative mandate. You must examine each applicant for a driver's license. For your guidance, the delegating statutes contain only these four guides: the examination must include tests of applicants' (1) eyesight, (2) ability to read and understand highway signs and signals, (3) knowledge of traffic laws, and (4) ability to exercise *ordinary* and *reasonable* care in the operation of a motor vehicle. Does the role of motor vehicle administration still look simple and easy and uncomplicated?

Let us examine first the requirement that an examination for a driver's license must include a test of the applicant's eyesight. Is it significant that the statute uses the term "eyesight" rather than "vision"? How do you measure eyesight? As part of the administrative process you must determine the scope of this test. Shall it consist of a visual acuity test only? Shall it include tests for color blindness, tunnel vision, glare recovery? Should other tests be included? On what criteria can you base your decision? Who actually knows what type and degree of vision is needed in the driving task?

In your role as a motor vehicle administrator, you check with the available authorities. You look to see what other states are doing, and, as a matter of fact, your administrative determination at best is an educated guess. Let us assume that you have determined that the test shall include visual acuity, color blindness, tunnel vision, and glare recovery. What standards will you follow? How can you relate each of these tests to the driving task?

For the sake of brevity we will concentrate on testing for visual acuity. We know, in fact it is general knowledge, that the visual acuity norm is 20/20.

Is this to be our standard? Does the driving task require 20/20 vision? Would such a standard be reasonable?

If 20/20 is not to be the standard, what is the minimum vision needed to safely operate a motor vehicle? These and similar questions must be answered if you are to implement the legislative mandate that the department conduct a test of each applicant's eyesight. How can you test your answers? Several criteria are suggested. For our purposes, two will be listed. First, are the tests and the test standards reasonable? Second, are they reasonably related to the driving task?

We now move on to the second portion of the examination. How do you test for "reading ability" and "understanding"? Can we equate the "ability to read" with "ability to understand"? If we can, or if we can't, what norm shall we use? Should this norm be equated with educational level or with level of intelligence, or some combination of the two? In either event, what scoring standards shall be used, or, to state it more simply, what will you use for a passing grade?

You will note that I have not been answering questions; I have been asking them. Answering questions such as these are an important part of the administrator's role in the administrative process. Each of the other parts of the required examination carry with them their own questions to be answered. Specifically, I raise for you two additional questions. How much knowledge of the traffic law is needed in the driving task? How will you determine the degree of "ordinary" and "reasonable" control necessary in the operation of a motor vehicle?

Driver license examinations today in all American and Canadian jurisdictions are based on statutory authority identical with or substantially similar to these Uniform Vehicle Code provisions. It should not be surprising that identical questions have been answered differently in different jurisdictions. All jurisdictions test for visual acuity, but all jurisdictions do not use the same screening standard or the same standards for minimum vision.

Some jurisdictions test only for visual acuity. Some include tests for color blindness, tunnel vision, and glare recovery. At least one state, California, is engaged in a gigantic project in conjunction with the University of California at Los Angeles to validate a new dynamic vision test that includes perception and identification of moving objects on any plane within the range of an applicant's peripheral vision. Thus far, I've been told, no correlation has been indicated between visual acuity and dynamic vision testing scores. I have also been told that there has been a near perfect correlation between the dynamic vision test scores of the members of the U.C.L.A. baseball team and their individual batting averages.

The administrative process, whatever it is—and I still am fearful of attempting a definition before this erudite gathering—is not complete with answers to the foregoing question examples. These answers must be implemented. Tests must be devised. Operating rules, regulations, and procedures must be adopted. Logistics of an examining and licensing program must be considered. Personnel must be selected and trained; examining schedules must be established; supplies must be provided; forms must be devised; internal procedures must be established; examining rules must be promulgated.

The second example we have chosen to illustrate the administrative process and how it fits into our existing legal system is also taken from the Uniform Vehicle Code.

Section 6-206 (a) (2) authorizes the department to suspend the license of any driver upon a showing by its records or other sufficient evidence that the licensee "has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways."

This statute, referred to by some as the "habitual violator" statute, has been used in good faith to permit the removal from the roads, through suspension of the driver's license, of persons with multiple violations on their driving records. This or substantially similar statutes have been subject to attack before our state courts on the grounds that they constituted an unlawful delegation of legislative authority without providing adequate standards or guides, or that they were void for indefiniteness. At present our courts are hopelessly divided with almost equal numbers upholding the statutes and voiding them on the grounds indicated.

This statute and the grounds on which it has been invalidated point up a weakness, if not a defect, in either our administrative procedure or in the legal system onto which it has been grafted. It would do little good at this stage to level indictments at either the legislature which wrote this law; at the administrative agency which sought to give it effect; or at the courts which delivered its interpretation. We must assume that each acted in good faith.

Further it points up the quandry in which administrative officials often find themselves as they seek to give effect to legislative policy. If the administrative process is to function as it was intended to do, either the statutes must become more specific in their delegation of rule-making or fact-finding authority or there must be a judicial relaxation of the basic rule that no part of the legislative power may be delegated to a nonlegislative body.

It was pointed out earlier that law constitutes public policy as expressed by the legislature. It was not intended to imply that the administrative process should not be concerned with the formation of public policy It cannot help but be concerned. The very manner in which a statutory law is implemented goes to the manner of its acceptance by the public. A good law—a good public policy—can be changed as a result of poor administration. I cite you one example antedating my own tenure as Commissioner of Motor Vehicles.

In the late mid-forties, the North Carolina General Assembly enacted a compulsory mechanical inspection law providing for state-owned and state-operated inspection stations. Whether through fault of the General Assembly which passed the law, or of the Department of Motor Vehicles which administered it, administration did not proceed smoothly Inspection lines were jammed. The public was inconvenienced; tempers flared, and the inspection program was repealed by the next session of the General Assembly. This might have been what was in Albert Coates' mind when he said that a driver's license law could be written with sufficient teeth in it to clear up our traffic jungles, but if it were enforced the General Assembly would be reconvened within six months on public demand to remove the offending law from the books

In my opinion, administration has a positive duty to participate in the formation of public policy. It has a duty to keep the public informed. It has a duty to offer its best advice and counsel to the General Assembly, to recommend needful laws for its enactment. During my incumbency as Commissioner of Motor Vehicles, I have sought to counsel with the General Assembly I have had prepared for them a program of recommended motor vehicle legislation in which

we have sought to analyze the problem and to recommend what appeared to us to be the best solution.

This brings me back to my reluctant admission earlier that much of our motor vehicle law and administrative regulation is based on empiricism. Many regulatory standards, legislative as well as administrative, at best are based on educated guesses. I suggest to you that our treatment of the motor vehicle and highway traffic problem merits more than guesswork. We need facts on which we can base intelligent decisions.

I hasten to make clear that I do not intend this as any indictment of present motor vehicle administration. Nor do I intend to imply that motor vehicle laws, regulations, and standards are either erroneous or based on false values. What I am saying is that after 50 years, in many cases, of empirical reasoning, it is time we try to validate our standards through a vigorous program of applied research.

For example, we desperately need to have a meaningful definition of the driving task. We need to know more about visual requirements as applied to the driving task. We need to know more about the effect of disease and physical impairment on driving ability. We need some way to measure the effectiveness of traffic laws and programs of driver improvement.

Further, in my opinion, research in this area should take into account the needs of those charged with the administration of our motor vehicle laws. Liaison must be established between the researcher and the administrator. We will not presume to tell you how to conduct your research. We will presume, in fact, we might be derelict in our duty if we did not presume, to suggest to you the areas that need researching.

Motor vehicle department records contain a wealth of statistical information that could prove useful. Our regulatory and licensing practices lend themselves admirably to the collection of other needed information. Heretofore, much of this information has been unavailable for use because of retrieval difficulty. With conversion of many departments to electronic data processing and punch card operations, retrieval is no longer a problem, and this information is now available for research purposes.

One further point and I will conclude this discussion. For research in motor vehicles to be effected, it must have direction, possess continuity, and the results must be made available for our use. The undirected shotgun approach to research in this area will not suffice.

What am I saying? I am saying that if motor vehicle administration is to do a better job, it must be given better tools. The results of applied research can provide us with better tools. We believe our competence in this area would be helpful in designing such tools. With financing made available to us, we believe that we are competent to construct tools designed for our own particular needs.

CONCLUSION—RECOMMENDATIONS

In summary, I shall be brief and concise. I have tried to give you a broad outline of the role of law, public policy, and the administrative process in the regulation of the ownership and use of motor vehicles. I have tried to fit the administrative process into our existing legal system. Through indirection, at least, I have suggested to you that. (1) consideration is now being given in some

quarters to the advisability of a possible reclassification of motor vehicle offenses; (2) if the administrative process is to serve its intended and hoped for purpose, either delegatory statutes must be made more explicit or there must be a judicial relaxation of the nondelegation rule; (3) administrative departments do and should participate in the formulation of public policy; and (4) research on a massive scale is needed to validate and upgrade our present programs of motor vehicle regulation.

We have not discussed these matters with you in the context of traffic safety. We have assumed that this audience does not have to be convinced of that need

I have come to one primary conclusion. That we need more and more research directed toward validation of existing regulations and standards.

As President of the American Association of Motor Vehicle Administrators, I solicit your help; we pledge our fullest cooperation.

COMMENTARY

PROFESSOR CARL MCFARLAND
University of Virginia School of Law

In the opening lines of the preceding paper, we gain a bit of perspective concerning the principal geography of the subject of motor vehicle law. It has to do, first of all, with the matter of getting the traffic over the road, second, with doing so with safety, and third, with some important byproducts in the nature of service functions. Also, there are references to an empirical approach, which is said to characterize administration of motor vehicle laws. Of course, "empiricism" means experience, facts, and practicalities. Embedded here are the basic problems of this body of law. There is no law, on any subject, apart from the facts and the situation. That is why law is so complicated. It follows the incredible complexities of human nature and human activity.

It is obvious that there is something bothering people who must work in the field of motor vehicle law and administration. One hears the word "delegation" come up over and over again. So, in order to make plain what I mean, I might say a few things about the point at which I would begin to approach this subject.

I suppose all lawyers—and certainly all law professors—try to see in three directions at once. They want to know what the law *was,* what the law *is,* and what the law *ought to be.* This cannot help but be confusing, because what the law *is* often depends largely on what the law *was* But the latter is really not particularly important here—this law that was, the so-called Common Law. We had no highway law in olden days, except a few rules about the King's Highway. The King's Peace was part of the body of rules having to do with the protection of travelers, not against their own mistakes or those of other travelers, but against outlaw elements. So I cannot see how we profit from the law that was.

We are hardly any better off with the law that is. While this motor vehicle law is basically statutory in its form, it is very hard to find, and it is very often poorly written We have an index of sorts to the things courts say in the United States, but if we want to look at what our legislatures or highway commissioners have been saying through their regulations, we have nothing to which we can

readily refer. We must go through the 52 codes to find what the statute is in the states, the District of Columbia, and the United States. Even if we do so, a great deal is not there. Certainly missing are the administrative agencies' rules and regulations, municipal ordinances, and a great deal of so-called special or local legislation.

In short, we face a serious problem the moment we attempt to discover what the law *is* in this field.

I can illustrate what I say by the Code of Virginia. The laws relating to motor vehicles are scattered through 15 titles of an approximately 50-title code in addition to the title which carries the heading, "Motor Vehicles." According to the index, there are 36 provisions on stopping a motor vehicle, about 30 on turning one around, and 21 provisions on speed. Actually, as I will amplify in a moment, those on speed do not have much significance, either, because they merely pass the problem on to someone else.

We do, of course, gain one thing out of this situation. Since most of the motor vehicle law is statutory in its form, it is man-made, and hence we do not hesitate in saying that it can be changed, built upon, and improved. The rub comes in deciding how to do so. Perhaps the trouble is not so much in *how* you do it, but what to do that will be better. Most of the Virginia provisions on speed say that somebody should make this policy—that is, decide what the speed limit should be. There are at least half a dozen provisions in the motor vehicle title of the Code of Virginia saying that cities and towns, the state highway commission, and school boards can decide on such a simple matter as a speed limit. The rub is that such decisions are controversial. After all, why should a public officer rush to decide some of these things unless and until there is considerable public demand? He just does not volunteer.

Much more could be said about that situation generally, but I would like to get on now to what I think I see and hear about this matter of the so-called delegation of authority. Presumably, different people mean very different things when they speak of delegation of authority. To my way of thinking there is virtually no block or bar left to delegation of authority if a properly advised and fully informed penman writes the authority to delegate. This is a fact that the current generation of administrators should recognize.

With Virginia as an illustration once more, there is virtually no limit on delegation. Virginia's situation is not unique in this respect, all states delegate a tremendous amount of authority to their administrative agencies. It has become the fashion to think that delegation of authority to administrative agencies is a Federal phenomenon, and that it has been oppressive. We think of it as one of those things that somehow characterize the evils of the modern age. We should read our history more closely. Personally, I do not know of anything that illustrates an oppressive bureaucracy more clearly than the Navigation Laws of England in the Eighteenth Century (which the new United States copied about 1790). Under those laws a ship, which was then the only vehicle of consequence, could be stopped in the harbor by a bureaucrat who could prevent the unloading of the ship at his discretion. Nowadays, of course, we are not nearly as oppressive. I suppose one consequence of not being oppressive is the danger of becoming lax.

In Virginia there is also a great deal of legislation that looks to me as though it was drafted in the style of the old "Henry the Eighth Clause." Henry VII

actually invented this clause, and it read that whatever the administrator did would be the law. That is, whenever the administrator did something the statute would be deemed amended to cover the case. You can imagine how this appealed to Henry VIII, and why it is remembered by his name. You cannot get anything that is broader than that, yet we have a provision something like it in Virginia for cities and towns. It states that they shall have all the powers granted to them plus all the powers usual to municipal corporations as well as all the powers they ought to have. They have, in short, potentially and virtually all the legislative powers of the Commonwealth. This is a broad delegation of power, and it is about as close to a Henry VIII Clause as you can get. But it is limited to local governments.

The potential field of authority is not so wide open as far as the administrative process is concerned. It is necessary that the statute contain some designation of subject matter and some form of a goal or policy to be achieved. I do not think that it is too difficult to provide that much in the highway field, because there the goal is to get the traffic over the road safely. You may be well advised to use more words than that, of course, but it is hardly any different than saying "reasonable rate" or "public convenience and necessity."

There are times, also, when politics is such that it is better to solve some of the basic questions—some of the hard-fought issues—by a statement in the legislation. The best example of that, I think, is in the public utility holding company act which the late Speaker of the House thought was the most significant piece of legislation of the New Deal. The issue there, as most lawyers forget, was whether the administrative agency should be given the authority to "simplify the structure," as it was euphemistically put, or whether you should write into the bill in so many words that there will be no utility holding companies serving more than one locality. If they had left as hot an issue as that was to the administrator's discretion, the pressure on the administrative arm would have been such that it would never have gotten around to act. So, the question had to be fought out in Congress. And it was. Probably nothing in the motor vehicle field presents as severe a test as that. But properly drawn legislation can do much to ease the way for administrators.

This problem is not at all unique to the motor vehicle and traffic field. I suppose that motor vehicles and television have changed the Twentieth Century more than anything else, at least outwardly. The motor vehicle problem is unique in one way since it concerns everybody. A larger segment of the public is concerned. But in other respects it involves the same problems that have been met in other fields of activity. Take the matter of industrial safety, which is pretty close to the field of highway safety. Statutes on that subject, state and Federal, lay down few of the guidelines and leave virtually all of the rules to the administrative arm. Also in the matter of food and drugs, which perhaps is another "species" of safety, this same thing occurred. Thus the real problem is not so much to find precedent or theoretical legal working room; the problem is how to deal with a subject which involves so many people that it takes courage to make some really significant regulatory decisions.

I want to mention one other field which I think is particularly interesting, and which is also a very old activity, going back even to Magna Carta. This is the matter of regulating weights and measures. Most people do not realize that the power to regulate this matter is written directly and specifically into the Consti-

tution of the United States. There is no reason under the law why Congress (or its delegees) should not regulate weights and measures, even down to the capacity of an ordinary cup. The Constitution confers that complete power over weights and measures. But Congress has never exercised this power, except to lay down a few simple definitions about what is a yard, a pound, a quart and so on.

What further was done there begins to get close to what may have to go on in the successful handling of the problem we are examining here. An organization was set up, federally sponsored to a degree under the leadership of the Bureau of Standards, but really run by the commissioners on weights and measures of the States of the Union. Of course they had to have a basis to go on and, very briefly, several model "uniform" laws were drawn up. One was suitable for a big state; another, not so extensive and complex, was more suitable for other states. As I recall, there were three in all. They have been dropped out of the handbooks, but everybody has them and uses them.

Once each year this group of state and Federal officials meets and compares notes on the regulations that have been issued under these types of laws. They issue an annual rule book. The group naturally has some very complex things to deal with. We talk about whether a driver licensee's vision ought to be 20/20. But what about the problem of establishing a standard for measuring the capacity of the hose that goes into your gas tank? What about compensation for the effects of heat and cold? What about the testing of a hundred different kinds of meters, scales, and measuring devices? These are all looked at, and once each year the regulation or standards are updated in the light of what has been learned.

All this has a direct bearing on the problem of the so-called delegation of powers in the states States may say that their legislatures could not adopt such federally proposed or unofficially adopted regulations. But this has not posed any problem in the weights and measures field. For example, the Virginia statute says that the Commissioner of Weights and Measures will promulgate the rules respecting weights and measures, but in so doing he is to take into account the model regulations proposed by the National Conference of Commissioners on Weights and Measures. He will be advised by them, but he will *promulgate* his own regulations. Since the state administrative officer has used his own independent judgment on the question of whether to go along with the rest of the country or not, we have no problem with the validity of the delegation of power, and no problem of surrender of the state's sovereignty.

There is a great deal more that might be said about the approach used in connection with the problem of weights and measures. I do not think it is any more or less scientific than the problem in the motor vehicle field, but there is one significant difference. In the case of weights and measures, the pressure is put on the minority, as typified by the merchant who has a scale in his shop or a gasoline pump. This generally does not present a very difficult problem. Or, at least, it does not present the same problem that occurs when one tries to provide for regulation of the great majority, as is the case with traffic and use of motor vehicles.

Nevertheless, there is a need to expedite the flow of traffic while at the same time keeping down the speed to safe level. When you try to do this, you face a difficult task of reconciliation. Of course, this is nothing new. We have had to achieve difficult reconciliations in the past. For example, the problems of work-

ing out a policy to reconcile rail and motor vehicle traffic needs call for reconciliation at very high policy levels. We could find other examples more specifically related to the highway traffic field. Obviously we have to reconcile speed with slowness in order to get the traffic over the road safely.

Reconciling needs for both speed and safety becomes a critical problem in a single place like the Holland Tunnel. It is even more difficult to make a rule for statewide application. In Virginia, for example, there is a general maximum limit of 55 mph. This, however, is subject to change by the highway commissioner or any city or town. Also, it applies only to a passenger car; another rule prescribes 45 mph for a truck, and a third requires school buses to stay below 35 mph except on divided highways, where they can go up to 45 mph. What is the basis for these differences? The statute does not say. Again, take the rule that all traffic must stop whenever a school bus stops. The net practical effect of this statute is to have a clumsy bus (perhaps driven by a teenage student and sometimes moving at a snail's pace on a winding road) bring all traffic in both directions to a sudden stop whenever it stops, at the busiest morning and afternoon hours. Obviously when their total effect is considered, these rules do not advance the policy of expediting the movement of traffic. Do they foster safety? We do not really know.

We see the same situation in the regulation of trucks. Some kinds of trucks would be kept off the highway if we were serious about expediting traffic. An example of this is the truck carrying such an overload of logs that it almost cannot get up the hills. The harmful consequences for both movement of traffic and safety are obvious.

We can see another problem in connection with license plates. What are license plates for? Are they for the benefit of the police, the tax authorities, or the individual driver who wants to identify his automobile? Most people would probably say they were for public identification purposes. If so, they are certainly poorly placed and, when the matter is looked at objectively, it may be questioned whether in this day and age they are the best means of identification we could devise. It seems to me that we ought to re-examine the whole license plate system in terms of the purposes we want it to serve.

Once a policy is arrived at, the next problem is drafting workable statutes and regulations. Knowing this conference was coming, I gave my class in legislation an examination based on motor vehicle law. I selected the speed laws of Virginia as the basis for my questions. It took two and a half single-spaced legal size pages to set down a condensation of the state speed law, the pertinent provisions of the Virginia Constitution, an ordinance of one municipality, and some administrative regulations. Then I gave them questions based on this material. Perhaps some law schools would not think of giving an examination on material like this, but here, I thought, we were getting right down to the grass roots of the law. Several of the students said they never faced such an ordeal. They all had cars and knew about speed, but to take these two and a half pages of laws on this presumably simple matter and put them all together so they made sense gave them considerable difficulty to say the least. These were third-year law students! How can we expect the man in the highway or motor vehicle department, or any other intelligent layman, to follow through a consistent line of interpretation or behavior based on such a body of laws?

In that examination, I asked my students some of the same types of questions that any lawyer might have to face. Were the delegations of authority valid? In the set of laws I gave them, there were three different types of delegation, each governed by a different set of rules—one set for delegations to municipalities, another for delegations to administrative agencies, and a third set for delegations to courts. The students also had to decide which provisions were conflicting, and perhaps hardest of all, they had to decide what the sanction was. Would an offender be penalized under the municipal ordinance, or under the criminal law of the state? On the face of the Code of Virginia, almost nobody could figure out this aspect of the laws very well because of the way they are written.

It seems to me we have at least half a dozen things in the typical code of motor vehicle laws that are likely to require some real effort to straighten out. We regulate the roadways, and that is done very well. We have learned to use the advantages and help that our engineering technology can give us in the design, construction, and marking of the roadway. But the further we get from this tangible technology, the further in trouble we are. We do a good deal in regard to the vehicle, particularly about the old vehicle that needs to be tested before it is allowed to be used by the public. We exert some control over motor fuels, tires and equipment. But when we come to the problems of testing and licensing drivers, and supervising the way they use their licenses to drive, we find a vast area where the motor vehicle administrators and law enforcement people are simply making expedient decisions on the basis of their personal reactions to the factual situations presented to them from day to day. There is no real guidance furnished by the statutes or regulations. There are no studies of techniques and results. There is even little observation and comparison of the experience and practices of the several states. Here is an area where we need to have not only better laws, but more considered bases for the laws we write. Perhaps the example of what was done in the weights and measures field bears looking into as a guide to what could be done.

Another matter that needs looking into is the way we enforce the law. Lawyers (and law professors) ordinarily do not like to talk about enforcement, so actually we have done very little about getting to know this aspect of the law. Whatever may be wrong with police and enforcement practices, however, cannot be blamed on the Common Law. The Common Law did not have any police system as we know it today. The modern police system did not come into use here or in England until Queen Victoria had gray hair. Up until that time the law required individuals to take the responsibility. If they wanted to have someone prosecuted under the criminal law, an individual had to take the initiative. In practice, however, we have gotten away from those devices of simpler times. Now we have either the "cop" or the "gang-buster" concept of enforcement. I think we shall have to get away from that by a better use of the technology science has made possible. There must be some room in this scientific age for devices to measure speed automatically, take down the identity of a car exceeding the limit, record the data in a manner which is beyond reproach or question, and thus provide a basis for dealing with the offender.

So I would say that if we have a policy—and we really do not have any choice except to adopt the policy of moving traffic as expeditiously as it can be done with safety—we should also turn attention to the problem of enforcement. And here the difficulty is that regulation of traffic simply involves too many people.

Everybody's business becomes nobody's business, and matters of great importance go unhandled.

In the December 20, 1964, issue of the *New York Times Magazine* there is an article on administrative agencies, and it opens with the following statement by Godkin, a journalist at the turn of the century: "Men soon get accustomed to the evils of their condition, particularly if there is nobody in particular to blame. The inaction or negligence or shortcomings of great numbers assume the appearance of a law of nature." Now, I submit, that is exactly what we have here. But perhaps a change is coming.

Here is another item, this one from the *Daily Progress,* a very good newspaper we have down in Albemarle County. It starts out in an editorial: "If automobile manufacturers don't do something about increasing the safety factors in their product, they may be forced to do so by federal or state legislation."

It could be that the time is past when one would find himself crying in the wilderness if he talked about this problem. The trouble is that no glittering generalities will solve it, and it is not a glamorous subject. This applies both to the writing of the laws that will be needed—and to the problem of enforcing them.

And here some new approaches should be developed. For example, suppose you did develop a mechanical method of detecting speeders and recording the identity of their cars. With such a new device you would first, not arrest everybody whom it detected, but rather note their identity and send a postcard to them, letting them know you knew they were speeding. This would be the initial step in educating the public to the fact that new enforcement methods were being used and that they were effective. Thereafter, the jobs of the legislator, the enforcement officer, the administrator, the traffic court judge, and even the motorist would become easier. I venture to say that it might do more good than a model code of laws.

DISCUSSION*

FLETCHER PLATT, *Manager*
Traffic Safety and Highway Improvement Department
Ford Motor Company

I do not see that it makes any difference whether we are talking about law or highway transportation. In looking at the various aspects of the law relating to highway transportation, we see that people are involved in numerous different ways. We should look at this as a systems problem.

Highway law, as it involves the acquisition of rights-of-way, affects the rights of people as landowners. As it deals with the licensing of drivers and registration of cars, administrative law touches people in an entirely different way. The public generally thinks of motor vehicle laws as traffic safety laws, but in fact, they are involved with carrying on various other administrative functions as well.

* CHARLES W. PRISK, *Deputy Director, Office of Highway Safety, Bureau of Public Roads,* also participated in this discussion, however, technical difficulties prevented recording his remarks

When considering the Uniform Vehicle Code, the safety aspects of licensing, vehicle equipment laws, rules of the road, inspections, etc. are not separated from the other policy or administrative objectives of the law.

Perhaps we should take a new look at highway transportation laws to see whether the movement of people and goods is the primary purpose, and safety a secondary effort to achieve an efficient system. Perhaps we will find that although safety gets the major share of attention and public discussion, it is only a part of the total combination of factors that make up efficient traffic movement.

With specific regard to laws which promote safety, we might compare them to the way we regulate aviation. The Federal laws and regulations regarding the use of aircraft work successfully with practically no official enforcement program. There are no Federal officials issuing tickets for speeding. Pilots are well trained and abide by the red warning line on the plane's air speed indicator. Licensing laws are strict enough to greatly reduce the need for enforcement.

I suggest it might be beneficial to take a look at some other countries and what they have done to deal with their growing traffic problem. I am told, for example, that Switzerland has very little formal regulation of traffic, but much stricter requirements about the licensing of drivers. The situation thus appears to be the reverse of ours, since here we have relatively easy requirements for licensing drivers and great emphasis on traffic law enforcement.

It seems to me we should regard this as an inefficiency in our system, and probably it will remain so until we differentiate between those things we are doing to protect the public against specific acts of unsafe driving and those things that are merely designed to encourage people to good driving habits. We should recognize that the side of the law which deals with forming habits involves situations which are neither civil nor criminal violations.

If we look at this matter from the standpoint of the people who violate traffic laws, it is of interest to note some research carried on recently at the University of Michigan indicating that there is a considerable measurable difference in driving habits of people with high accident rates and no violations, and people with high violation records but low accident rates. It seems to me that if drivers with high accident rates and drivers with high violations can be separated by test, it should cause us to reexamine our requirements on driver licensing and revocation.

Turning again to this problem of dealing with violations of traffic law through enforcement by the police and the courts, a study was made at Michigan State University a few years ago examining for a six-month period the traffic violations and arrests that occurred on a section of a Michigan state highway. It seems amazing, but this study showed that there were about 3,500 actual violations for every arrest that was made by the highway patrol. This gives some idea of the size of the problem of enforcing safe driving practices on the highway by regulatory methods.

When we look at the whole process of motor vehicle administration, therefore, it seems to me that we should separate, in a systems concept, the problems of safe driving, safety regulations which are required from the standpoint of keeping traffic moving efficiently and safely, and those matters which by their nature call for regulatory action. In this way we may make it more logical for the general public to understand the function and the meaning of the law.

Mr. Williams.—By using the Federal Aviation Agency as an illustration of a method of administering certain laws with minimum enforcement, you were not suggesting a similar structure to administer motor vehicle law, were you?

Mr. Platt.—No, I was not recommending it. I used it to indicate that there were different ways of dealing with a man-machine safety problem.

ALAN M. VOORHEES, *Consultant*
Alan M. Voorhees and Associates

This discussion interests me although I am not an administrator, but an engineer. I find that as an engineer, however, we have the same objectives—that of getting the traffic over roads safely and efficiently. But in carrying out these objectives we each have different responsibilities. The administrator must provide the plan, while the engineer is faced with building and operating highway facilities.

It appears from this discussion that we are each short on facts and we need more research to support our programs. In these areas I think that cooperative efforts would be very helpful. For example, my office staff recently worked on a project dealing with accidents at railroad grade crossings. In this study, we were trying to isolate the kinds of physical environment that influence accident rates at grade crossings. What site distance produced accidents? What effect do different protective devices have on accidents?

If we could have correlated the data related to the railroad grade crossing with the characteristics of the drivers who had accidents, we would have been in a much stronger position to provide guidance for solving the grade crossing problem.

Engineers can use the records of administrators in a great many ways. For example, in Connecticut we used the motor vehicle administrator's records to contact several thousand people regarding their recreational travel. This helped plan for highways to serve recreational travel.

Professor McFarland's point about finding some way short of an arrest to let people know they were being observed reminds me of a story they tell about destination study on a freeway. Since it is impossible to stop people on most freeways, a method was contrived to record license numbers, and with the help of the motor vehicle department it was possible within 24 hours to send a letter to these people, saying they were seen on a certain freeway a certain time and date. The letter asked where they were going and where they had come from. Some of these got misaddressed, and created embarrassing problems. But the study did obtain valuable data, and such efforts should be continued in the future to assure that we can cope with the problems that we now face in engineering our highways.

ARNOLD W. WISE, *Counsel to the Commissioner*
New York State Department of Motor Vehicles

There are four points to which I would like to direct my remarks. I think that what has been said so far leads us to further consideration of, first, the nature of a license to drive, and, second, the delegation of authority to the motor vehicle commissioner regarding driver licensing. The relationship of these two things needs to be better understood. I would also like to talk about a third matter, the vagueness of statutes; and, fourth, the nature of traffic violations.

Looking at the nature of a license, we in New York are probably under a disadvantage because our highest court has already held that a driver's license is not a naked privilege, but rather a valuable property right. Notice it did not say a *vested* property right, but rather a *valuable* property right. In practice this means that when you deal with a right of this type you are faced with the problem of providing "due process of law" whenever the license is taken away. This includes advance notice of what the administrator is going to do, confrontation of the person involved with the witnesses or evidence to be used against him, and so forth.

In my opinion, this doctrine which has grown up puts too much protection around the driver. I have seen many cases where a driver with a record of many violations against him has been allowed to continue to drive because you cannot merely use a numerical system—such as a "point system"—to decide what to do about this driver and when to do it. You must give him a real hearing, and this is what we have to do even in our persistent violation cases.

If we pursue this subject we get to the question of delegating authority to decide who is a persistent violator, and to other questions. But, continuing to focus on this matter of the hearing, New York procedure calls for a proceeding at which the violator is permitted to give an explanation of the circumstances surrounding the violations of which he has already been convicted. At this point we do something which I think most people will agree is correct; that is, we give the man an opportunity to explain his economic situation, his exposure to traffic, etc. As a result, we cannot be accused of taking the same action against a taxi driver who drives thousands of miles each month in a congested traffic and a casual driver who merely takes his car out on weekends for pleasure. The economic aspects are always difficult for the administrator. I note that Rhode Island and some other states have now taken the same position as New York as to the nature of the license.

Earlier I raised the question of whether the driver might not have too much protection under our present system. I can illustrate this by reference to a bill which was introduced in the legislature recently, and which is typical of many bills that sometimes pass state legislatures It provided that before any electronic, electrical or mechanical device could be used for measuring speed, the police agency using it would have to put up a sign about half a mile ahead of the point where the device would be used Of course this is ridiculous from the police viewpoint of law enforcement. Technically, the bill would have required a sign even in those cases where a speedometer was being used to measure speed.

Another example: Before a motorist in New York is permitted to plead to a traffic violation charge, the law requires that he be told that something may happen to his license if he is convicted on the basis of this charge. If he is *not* told this, he has not been accorded due process of law.

We also have to be extremely careful about handling the license. The New York driver's license is a two-part affair. On one part there is space for a record of convictions for traffic violations, which, the law says, should be detached from the license proper. This stub with the record on it is intended to be used by the court for the purpose of determining punishment in the event of another violation. The statute says very clearly that this part shall not be used by the police officer or anyone else when the driver is stopped. Even the court cannot look at this part until after conviction. There is a good theory behind this, of course,

and that is that you do not want the court or police to be prejudiced in any way by this record.

However, you can imagine the result of this rule Recently a driver who was stopped by a police officer gave the officer the entire license, with the record stub still attached to the license. Then he went into court and pleaded guilty, but the higher court reversed the conviction. They said that giving the conviction record stub, voluntarily or involuntarily, to the police officer constituted prejudice to his case.

You can see how much protection this has given the motorist All he has to do is somehow get this conviction record stub in the policeman's hands, and he cannot be convicted. This is what I call too much in the way of protection, and it illustrates a type of problem which I think needs to be looked into. It is the inevitable result of the courts' efforts to deal with the driver's license as a valuable property right.

Going back to the question of the delegation of authority to determine cases of persistent violators. Mr. Scheidt's paper noted that most statutes provide that the administrator may take action against the "persistent violator," but they do not say who shall be deemed a persistent violator. The New York statute is drafted this way, but even though no particular standard is spelled out, we have had no particular difficulty with this delegation.

Indirectly, we have been criticized for possible use of an electronic system in performing our duty of getting the persistent violator off the road. We have been charged, in effect, with redelegating our authority to an electronic tape system. Push-button suspension of drivers' licenses is not desirable, either on the part of the public or the administrator.

As to the matter of delegation of authority, generally, I would like to refer to the last statute added to our equipment law. It related to tires and had to do with tread depth of tires. The statute provided that the commissioner shall promulgate rules governing the safe operating condition of tires, capable of being employed by a law enforcement officer through visual inspection of tires mounted on vehicles. If the statute had merely left it at this, we would have been in difficulty with the delegation. However, the law went on to say that the inspection should include visual comparison with simple measuring gages, and that the requirements shall encompass the effects of tread wear and depth of tread. So, in the end this statute specifically pointed out to us what we were to decide; that is, condition as revealed by looking at the tire and measuring the tread In the light of this statute, the commissioner issued a rule that there should be a minimum tread depth of 2/32nds of an inch for determining safe condition. How did he arrive at this figure of 2/32nds? It was a sort of compromise, since we had to do something specific. I point this out to indicate that if you are careful in drafting your legislation, you will write in some type of standard on which the administrator can base his decisions

Professor McFarland.—Why did you state your standard in terms of 32nds of an inch rather than 1/16ths?

Mr. Wise.—This was for a practical reason. It was shown to us that all of the depth measuring gauges are calibrated in 32nds of an inch.

Professor McFarland.—Yet the private individual probably would be better able to understand a 16th of an inch, since this is the way his cheap ruler is calibrated, and he could mark it on his ruler and do his own measuring. So you wrote your regulation for the benefit of yourselves rather than the public, and you may have to suffer for that.

Mr. Wise.—This is very true, and we have had the public writing in to us to say that everybody knows 2/32nds is the same as 1/16th, so we should use the 1/16th figure that is more easily understood.

EDWARD ROCKWELL, *Attorney*
Automobile Club of Michigan

Commenting on Commissioner Scheidt's paper with reference to the role of the administrator in the field of motor vehicle law, I think that the general public fails to appreciate the importance of his activities in carrying out the mandates of the statutory law. "Enforcement" to the public is something they see within the context of a police officer carrying out his duty on the streets and highways, taking action against the violator. It is much more difficult for them to recognize the obligation of the administrator to "enforce" the law, perhaps in a less dramatic fashion.

In most states the law requires the citizen, when he applies for a license to operate a motor vehicle, to submit to a rather thorough examination of his qualifications and knowledge, but once licensed, this same driver has a feeling that the administrator no longer has any relationship to him, or he to the administrator. He becomes a sort of "forgotten man."

Only when through his own actions he becomes a subject of administrative attention by reason of his driving failures, does he suddenly become aware of the administrative enforcement power. His license is in jeopardy, and often the reason or logic for this perilous situation escapes him He is told that his license is going to be suspended or revoked, or otherwise limited, and this is happening to him because the law requires the administrator to take this action. Why the law requires this action remains unexplained or unclear, because he does not recognize this action as important in the preservation of the safety and welfare of the general public He thinks that he is being persecuted by some remote and impersonal agency of government that neither understands his problems, nor cares

Some substance is given to his conclusions by the courts, which lend a sympathetic, if not too realistic, ear to his complaint on appeal, and reinstate him as a licensee in many instances where the public concern in safe highways is given secondary consideration to his emotion-charged plea of necessity. He finds himself back on the road, a few dollars poorer as the result of legal expenses, and certainly none the wiser.

Why the administrator put him through this expense remains a mystery So we must ask ourselves "Does it make sense that the administrator must do many things required of him by the law in the enforcement of statutes, rules and regulations, all of which are perhaps predicated on the common good of society, and yet be required to do this to a public that neither knows or understands why he must do these things?" Should not the people understand the

reason behind the rules they are required to live by as they drive their precious vehicles around the streets and highways of the state?

I submit that if the more than 90 million drivers in this country knew the reasons behind administrative enforcement policies and practices, there would be a greater acceptance of them, and this, in turn, would create an atmosphere of more efficient and effective administration. The most important product of this new climate would be fewer accidents. Perhaps for the first time the driver would recognize that these seemingly complicated and arbitrary rules and regulations are really nothing more than a blueprint for survival—his survival and that of his family, his property, and the community where he lives.

And the administrator, charged with this awesome responsibility to the public, appears to overlook the necessity of informing and helping the public to recognize these important facts of life. He appears more inclined to seek a change, a "toughening up" of the law, or to get another law passed, which generally adds more to the confusion of the situation than it contributes to the resolution of the problems to be faced.

As an example of what is meant when I suggest that the administrator is more inclined to pass another law than to enforce the one already in existence, let me cite the results of a rather extensive study undertaken in Michigan to determine how many motorists continued to drive after their operator's license had been revoked or suspended. It was found from a sampling of 1,000 such cases, that over 50 percent of these motorists went right on driving. I would hazard an opinion that similar results would come from similar studies in other states.

Understandably, the administrator and the enforcement people complained that they didn't have enough manpower to enforce the revocation or suspension. But I think that they completely miss the point. They fail to recognize that the important thing about these findings was the reflection of the public attitude about driving while under revocation or suspension. The average man on the streets feels strongly that he has just as much right to drive his car as he has a right to do anything else within the limits of his means. The concept of "privilege" just doesn't make sense to him. He certainly recognizes his constitutionally protected rights of trial by jury, right to counsel, and the many other rights which he may safeguard when subjected to the criminal laws of the land. How then, he asks himself, can this important "right" to drive be "arbitrarily" taken away by some administrator, for some reason which doesn't quite add up to him?

His answer to this question, and the answer so frequently reflected in judicial reversal of administrative orders, is that they can't do this to him. So he continues to drive in spite of the revocation order. And the public seems to condone this conduct. It is even more ironic to him when he reads in the papers where the highest courts in the land are constantly granting new trials or reversing convictions of felons whose rights have in some way been overlooked or underprotected. I think that an average person recognizes and accepts the principle that he is accountable for his behavior. And I think that it is equally true that if this same person would recognize how his behavior behind the wheel of his automobile gives rise to this same accountability to society, he would likewise accept that.

This, then, I conceive to be a most vital change of direction that must be taken by the administrator: to help the public to understand better the reason

why the law states what it does, and why the administrator must act as he does.

A welcome byproduct of this new direction perhaps might be a reduction in the number of legislative proposals which promise to "resolve" this knotty problem in one fell swoop, and a reaffirmation in the mind of the legislator and administrator alike that the law—to quote Mr. Morony—is supposed to "do something for people, not to them."

I take strong exception to a growing trend among administrators to call upon a heterogeneous group of people from diverse walks of life, whose primary qualification for selection is that they are otherwise not occupied with business or personal affairs, to gather and dictate policy on what should be in the law and how it should be enforced. I think that citizens must play an important role in the formulation of broad general policy, for they must pay for and submit to changes in the direction of law that come about in the name of progress. But it becomes somewhat of a farce if these same people are asked to pass judgment on matters more properly within the domain of the specialists, the professional people in the various disciplines of science and law who are eminently more qualified to answer such problems. I think that the administrator must recognize that in the making of administrative policy, a sense of perspective is necessary in determining what properly lies within the field of the experts, the professionals, and what lies within that area where the citizen rightfully should be heard.

It seems to me that substantial efficiency can result in the public interest if the motor vehicle administrators would improve registration and titling practices. In other words, the two functions under registration and title law procedures appear to be the raising of taxes and fees through registration and assuring a clear title. Certainly there are many things that can better serve the public interest if a broader perspective is adopted insofar as registrations and titles are concerned. A great deal of needed information should be made available to many businesses and public agencies of government by the administrative agencies. Certainly much information is available for needed economic reasons.

I would have an honest difference of opinion with Mr. Wise over his suggestion that the motorist in New York or anywhere else today enjoys overprotection. If we look at our judicial procedure, we find that in connection with any charge—whether bigamy, bootlegging or what-have-you—the defendant who wishes to enter a plea of guilty has to be advised of the consequences of his plea before the court will accept it. In a good many states the law requires that courts do this whenever suspension or revocation of a license is one of the possible consequences under the driver license law or financial responsibility law. I think this is good. It helps explain the law to the general automobile-driving public. I believe the public wants to obey laws, and I submit that when a motorist gets on the highway he has a right to be protected by good administrative and judicial procedures. He has as much right to expect this as he has a right to expect that law enforcement will work for his protection on the highway to the greatest extent possible.

We all realize—and Mr. Morony puts it well in the statement of this conference's objectives—that we have to be concerned with a reconciliation between law and science, for the automobile is one of many benefits derived from modern science and engineering technology, and the problems of modernizing motor vehicle and traffic law have parallels and comparables in all other fields of law.

Too often the motorist, who is an ordinary person, is referred to as "the nut behind the wheel," and a maniac, and a lot of other things.

The truth is that he is just an ordinary citizen, yet he probably contributes more to the domestic economy than any other citizen, regardless of his business or class. Motor vehicle owners are probably the most overtaxed group in comparison with the problems they cause or the demands they make on the economy. The owner pays for the administration and enforcement of the laws that his driving necessitates; he pays for the highways and traffic lights that are built for automotive travel, and he contributes revenue to all levels of government.

The engineer has done a wonderful job in designing and constructing good highways and automobiles, but I feel that there are a great number of us, as has been indicated here, who are outmoded in our thinking about types of laws and methods of administration. I sincerely hope that this meeting will provide some much needed direction for the law as it attempts to meet the challenges of the automotive age.

DR. JOSEPH P. HENNESSEE, *Counsel*
American Association of Motor Vehicle Administrators

Perhaps there was a little reluctance on the part of Professor McFarland to come to grips with the question of what the law used to be, and how we have progressed to where we are today. I have no charter to speak for anyone except myself, but we make a mistake if we lose sight of how we got to where we are today in motor vehicle administration. We need to keep this in mind if we are to move forward.

The agenda indicates that we should be concerned with exploring some of the interrelationships of the law and the social and economic effects of the automobile. With this in mind as we go back to the early days of the automobile, we are forced to recognize that in the beginning the automobile was regarded as a nuisance and was regulated as a nuisance. It went so far that some courts said the automobile could be banned from the highways altogether. This was easy when the automobile was only an occasional phenomenon that appeared spouting smoke and noise and scaring the cattle in the field and normal horse traffic on the highways.

So we resorted rather naturally to approaching it as we approached any other nuisance. In those days, I do not think we considered very carefully what was involved in a license to operate one of these machines. Even later, when we began to license automobile drivers, I believe it was an inadvertent choice of words that led us to speak of a license to drive as a mere privilege which a bountiful sovereign could grant or take away at his pleasure.

Now, however, we have gone from the point where an automobile was an occasional nuisance to a point where we have 80 million cars and 92 million drivers. This is more people than the total that voted in the last presidential election.

It was easy to treat the automobile as a nuisance when it was only an occasional problem, but it is a far different matter when there are so many people involved. The entire approach to the automobile has to be couched in terms that will be acceptable to 92 million people.

There are no longer simple answers in this matter. Those who think so should recall the story told of Will Rogers when he was asked how to deal with the

German submarines which were sinking ships in World War 1. It was simple, Will said, all you have to do is boil away the water in the ocean and pick them up off the bottom. Well, he was asked, how do you do that? And Will Rogers' reply was: "Don't bother me with details. I've given you the main idea; it's up to you to work out the details."

This story applies to a good many laws that our state legislatures have passed, for in this same way they have created some of the basic problems of administration. They have given us the main ideas, but they have failed to fill us in on the details.

Professor McFarland suggested that the states generally—the legislatures—have all the power they need to delegate necessary authority to motor vehicle administrators. I do not agree. The courts have, from time to time, rapped the knuckles of administrative agencies, and once an administrator has had his knuckles rapped for trying to implement a delegation of power he is naturally more wary.

It seems to me that this point is one of the most basic problems of present administrative law. The difficult position of the administrator in justifying his decisions to the courts is illustrated by the case of *Thompson v. Smith,* decided by the Virginia Supreme Court in 1930, wherein a statute was voided on the ground that it was a delegation of legislative authority. This case expresses a fundamental principle of administrative law, but it also is important as being the first major case to recognize that the use of an automobile is a necessity in our existence, and that there is something else protected by the Fourteenth Amendment in addition to life and property. It says that the use of an automobile is in the nature of a liberty which the law protects.

So I think that Mr. Scheidt makes an extremely important point when he says that there is today a completely different reception of the automobile by the public, and a completely different reception of the laws, which he describes as the old Common Law of crimes. We all know that the ideas involved in these laws cannot possibly be applied to the daily habits of 92 million people as they once were—or still might be—when only a small minority of the public was the object of the regulation. I think that this is the significance of Professor McFarland's point: when 92 million people are all doing the same thing it becomes easy to rationalize this behavior and attitude. This is why there is no real public censure about being cited for a traffic violation. Enforcement of these laws becomes a totally different type of problem from that of enforcement in the days when the hue and cry was raised in order to bring a culprit to justice. We need to give considerable thought to this aspect of traffic and motor vehicle laws, particularly those dealing with size and weight, equipment, and vehicle registrations. We should ask whether the regulations that we all agree we must have in this area should be in the form of the criminal law or through some other legal or administrative process.

Mr. Williams.—The recurring question that comes to my mind from the paper and discussion we have heard so far is exactly who is it that determines what is in the best interest of the public. This is a rather elusive area, I realize, but I suspect that many would agree that in the development of governmental processes in this country, we never contemplated as complex a highway transportation system as we have today As layer upon layer of new laws and regulations

are imposed on the motoring public, the average driver feels more and more remote from the processes which establish the law and administer it. Personally, I am fearful that this opens the door for more and more arbitrary decisions as to what is in the public interest. Public policy, I fear, is not always in the public interest, depending upon what motivates it and influences its administration.

Mr. Scheidt's paper raised what I feel is a key point when it referred to the need for more research to validate many of the regulations and procedures that are now in effect. The paper also referred to a legislative mandate to the administrator to provide examinations which will test eyesight, knowledge of traffic laws, and other matters. Today we hear a good deal about the periodic need to re-examine all drivers. This has an attractive sound about it, but at this point it promises more in theory than can be delivered in practice because the truth is that we do not know what to examine for. We need to know much more about those medical and physical characteristics which are accident-causing factors.

This need to validate regulations now in effect and to do more fact-finding should be considered. Is this something that we all would recognize as a critical need if we are to progress in improving our administration? I think it relates quite clearly to legal research, since laws and regulations are supposed to reflect these conditions accurately.