FOURTH SESSION

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State of Colorado, Presiding

LAW, TRAFFIC REGULATION AND THE ADMINISTRATION OF JUSTICE

THE HONORABLE THOMAS GALLAGHER
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These remarks are intended to suggest a classification of the basic mental attitudes of traffic law violators, and to express some thoughts relative to equal and just penalties for offenders in these various classifications. This is in the belief that some program must be developed in each state which will provide a means of obtaining accurate knowledge as to the mentality and the economic status of traffic law violators—to the end that the imposition of penalties for traffic offenses, after giving proper recognition to such factors, will serve to bring about more equal justice and will serve as a more effective deterrent against future offenses.

In preparing this resumé, I have not deemed it necessary to quote statistics with reference to the great increase in motor-vehicle drivers or motor vehicles on our highways, nor to direct attention to the greater increases therein which may be expected in the future, well known to all of you. These remarks, of course, have reference to traffic violations which are inherently dangerous to person and property, such as operating a motor vehicle at excessive speed; operating without proper control; operating with faulty equipment; operating in disregard for signs or signals at intersections or crossings; operating in disregard for others using the highways; and similar acts in violation of statutes, municipal ordinances, or Common Law requirements.

Various classifications of traffic law violators have been suggested by experts in this field. One such classification which has received wide recognition is that of James P. Economos, director of the Traffic Court Program of the American Bar Association, which was submitted in the October 1964 issue of *Traffic Quarterly*. There Mr. Economos states:

". . . Considered from the standpoint of driver-improvement methods, there are three types of delinquent drivers—the Can'ts, the Don'ts, and the Won'ts.

"The *Can'ts* are those who because of physical or mental defect are unable to operate motor vehicles properly . . .

"Neither a jail sentence nor a money fine will correct any defective physical or mental condition. It will be necessary for the court to require re-examination

Fourth Session *(left to right). John Reese, Texas Technological College, Richard Arens, Catholic University School of Law, Victor Perini, Jr., Automotive Safety Foundation, Justice Thomas Gallagher, Minnesota Supreme Court, Duke W. Dunbar, Attorney General of Colorado, Charles Bowman, University of Illinois College of Law, Yale Fisher, National Highway Users Conference, and Louis Lauer, Columbia University Law School*

of the operator to determine the exact extent of the disability. If his defect is not correctable, the judge and driver licensing authority should undertake to bar the driver from the use of the highways."

* * *

"The *Don'ts* are those deficient in one of three respects they don't understand the rules of the road, they display less than ordinary skill because of lack of experience in its operation, and they lack judgment in the operation particularly with reference to the laws of motion . . .

"Driver-improvement schools . . . and additional driver's safety education may be suggested . . .

"The *Won'ts* are those who lack respect for traffic laws or because of a faulty attitude refuse to accept personal responsibility for obeying traffic laws . . .

". . . The repeaters will most often be found in this group, and here the traditional fines, jail sentences, and license suspensions and revocations can be effective."

While the foregoing is excellent in my opinion, it is my belief that perhaps a more detailed classification would be of additional help in the imposition of traffic violation penalties, so as to meet the requirements of equal justice. At the outset I suggest that traffic law violations fall into two general classificaions, as follows:

1. Intentional or reckless violations, and
2. Non-intentional, careless, or thoughtless violations.

Under these two general headings, offenders may be further and more definitely classified

INTENTIONAL VIOLATORS

1. The conscious violator who intends to act in violation of the law with the knowledge that his wrongful acts may lead to injury or damage, but who feels confident that they will not do so because of his feeling of superiority

2. The conscious violator who acts unlawfully with the full realization that his acts are unlawful but believes them essential because of some personal requirements or emergency such as reporting for work on time or making some other required deadline. His driving is almost constantly in violation of traffic laws because he believes he has no other choice.

3. The conscious violator or the "show-off" type, usually a juvenile, who is trying to impress others with his skill or daring, or otherwise with the superiority of his prized motor vehicle, by driving it at excessive speeds or otherwise recklessly with little comprehension of the disasterous results which might follow.

4. The conscious violator with motor vehicle equipment which he knows to be defective and dangerous, but which, because of his limited resources, he cannot afford to have repaired, and which he must drive to reach employment, prospective customers, etc.

5. The conscious violator who, because of physical and mental exhaustion, is not capable of driving, but who continues to drive in order to maintain a schedule or to arrive at a destination on time.

6 The conscious violator who intentionally consumes intoxicants to the point where he is no longer capable of operating his motor vehicle with judgment or accuracy, and who thereafter drives it in violation of statutory or ordinance requirements.

As to intentional offenders, the penalties should be relatively drastic, since their unlawful acts are performed with full knowledge of the dangers to which they subject others.

NON-INTENTIONAL VIOLATORS

1. The non-intentional violator who, because of mental limitations, is so lacking in coordination that his driving is often in violation of traffic laws.

2. The non-intentional violator whose mental capacity may be normal on most occasions, but whose reactions under stress or sudden emergency are often illogical if not absent completely, with resulting violations of traffic regulations.

3. The non-intentional violator who seldom drives or who is otherwise inexperienced and who in consequence usually drives so slowly and cautiously that other drivers on the highway or at crossings become enmeshed in traffic tie-ups and must take risks to extricate themselves from such situations.

4. The non-intentional violator whose total lack of mental capacity is such that he is incapable of either understanding or observing traffic regulations.

5. The non-intentional violator, physically handicapped, because of defects in sight or hearing, or otherwise, or because of diabetic condition, who does not realize that his handicaps are such that his operation of his motor vehicle is often in violation of traffic regulations and dangerous.

6. The non-intentional violator whose violations arise from an unconscious lack of consideration for others due to his social environment or to limitations in education and training, and who drives totally unaware that he ever imposes upon the rights of others

While the non-intentional violators do not merit the same condemnation as do the deliberate violators, since the danger caused by them often exceeds that caused by the intentional violators, obviously some severe penalty for their violations is required.

It may be well at this point to list the customary penalties which the traffic courts throughout the nation are presently imposing. These include the following:

1. Monetary fines,
2. Imprisonment for short or long terms,
3. Revocation of driver's license,
4. Impounding of automobile license plates,
5. Removal of defective automobiles from highways,
6. Required attendance at police traffic schools, and
7. Required attendance for psychiatric treatment.

It may be noted that these penalties which are effective in most cases involve personal punishment (1 and 2); temporary or permanent removal of dangerous drivers and motor vehicles from the highways (3, 4, and 5), and the re-education or rehabilitation of drivers where such factors would be effective (6 and 7).

The basic objective of penalties in traffic violation cases is to punish the offender, to deter him and others from future violations, where necessary to change his mental attitude so as to create within him a respect for traffic regulations, to effectuate the removal of improperly equipped motor vehicles from the highways, and to terminate driving privileges of incompetent drivers. In a number of jurisdictions the courts also endeavor to insure payment of damages by the offender to those who have suffered losses by reason of his violations.

I believe that more and more consideration should be given to this aspect of the problem. Certainly when substantial financial burdens become attached to automobile accidents, unlawful conduct on the highway will diminish. In all cases it must be recognized that in imposing monetary fines or in depriving an offender of the use of his automobile, consideration must be given to the economic status of the offender, as well as to the possibility that the penalty imposed upon him may injure innocent persons dependent upon his income.

With the foregoing principles in mind, I would suggest that, to achieve equal justice in the imposition of penalties with respect to the above classification of intentional and non-intentional violators, the following penalties would be required:

INTENTIONAL VIOLATORS[1]

CLASSIFICATION	OBJECTIVES	RECOMMENDED PENALTY
1. a. First Offense	Punishment of offender	Substantial monetary fine.
b. Second Offense	Punishment of offender	Increased monetary fine.
c. Third Offense	Removal of driver from highway	Increased monetary fine, suspension of driver's license, possible imprisonment for short term
2. a First Offense	Punishment and re-education of offender	Monetary fine and required attendance at police traffic school.

INTENTIONAL VIOLATORS[1]—Continued

CLASSIFICATION	OBJECTIVES	RECOMMENDED PENALTY
b. Second Offense	Punishment and re-education of offender	Increased fine, required attendance at police traffic school
c Third Offense	Punishment and re-education of offender	Increased fine and sentence to imprisonment, with possible probation.
3. a. First Offense	Punishment of offender	Substantial monetary fine.
b. Second Offense	Punishment of offender	Increased fine, required attendance at police traffic school.
c. Third Offense	Removal of driver from highway	Increased fine, suspension of license.
4. a. First Offense	Punishment of offender	Fine with requirement that vehicle be repaired.
b. Second Offense	Removal of driver from highway	Increased fine and surrender of license plates.
5. a. First Offense	Punishment of offender	Monetary fine.
b Second Offense	Punishment of offender	Increased monetary fine, required attendance at police traffic school
c. Third Offense	Removal of driver from highway	Increased fine and suspension of license plates
6. a First Offense	Punishment of offender	Imprisonment for short term, with possible probation; suspension of driver's license for 90-day period.
b Second Offense	Punishment and removal of driver from highway	Imprisonment for 90 days and revocation of license for one year.
c Third Offense	Punishment and removal of driver from highway	Revocation of license for 5 years.

NON-INTENTIONAL VIOLATORS

CLASSIFICATION	OBJECTIVES	RECOMMENDED PENALTY
1. a First Offense	Retraining and re-education	Monetary fine, required attendance at police traffic school.
b. Second Offense	Retraining and re-education	Increased fine and required attendance at police traffic school
c. Third Offense	Removal of driver from highway	Increased fine, suspension of driver's license for 90-day period.
2. a First Offense	Retraining and re-education	Monetary fine, required attendance at police traffic school
b. Second Offense	Retraining and re-education	Increased fine and required attendance at police traffic school
c Third Offense	Removal of driver from highway	Increased fine and suspension of driver's license for 90-day period with required treatment by psychiatrist.
3. a. First Offense	Retraining and re-education	Fine and required attendance at police traffic school.

NON-INTENTIONAL VIOLATORS—Continued

	CLASSIFICATION	OBJECTIVES	RECOMMENDED PENALTY
b	Second Offense	Retraining and re-education	Increased fine and required additional attendance at police traffic school.
c.	Third Offense	Removal of driver from highway	Suspension of license for 90-day period or longer.
4. a	First Offense	Re-education if possible	Fine and required attendance at police traffic school.
b.	Second Offense	Removal of driver from highway	Suspension of license.
5. a	First Offense	Physical rehabilitation of driver	Fine with requirement for sight or hearing aids; control of diabetic condition while driving
b.	Second Offense	Physical rehabilitation of driver	Increased fine with strict requirements as to cure of physical handicaps.
c	Third Offense	Removal of driver from highway	Permanent suspension of driver's license.
6 a	First Offense	Retraining and re-education	Substantial fine, required attendance at police traffic school
b	Second Offense	Retraining and re-education	Increased fine
c	Third Offense	Removal of driver from highway	Required treatment by psychiatrist, suspension of license.

[1] In all cases where there has been property damage, the court should require suspension of license until such property damage has been paid for or secured by bond All fines should bear a relationship to the economic status of the offender All imprisonment penalties should provide for release during daytime and confinement after 6 P M where offender's dependents look to his salary for necessities

To make any traffic program effective, there must be adequate personnel to handle the various problems which arise from traffic violations. In most states, departments with judicial powers have been created to administer laws in various areas. Thus, such departments have been established to handle cases relating to industrial accidents under workmen's compensation laws; to regulate and control highway and rail transportation under railroad and warehouse commissions; and to govern the assessment and collection of income, estate, and other taxes under commissioners of taxation.

Today we must recognize the need for establishing such a department with judicial powers for the regulation and control of highway traffic. Possibly the functions of this department should commence with the importation of the motor vehicles into the state, and thereafter extend to their registration and license; the imposition of annual taxes thereon; the issuance and regulation of their operators' driving licenses; and finally their removal from the highways when no longer safe. I believe it should be separated from state departments functioning in the construction and maintenance of state highways systems.

I visualize the divisions of this department as follows

1. A division handling registration of motor vehicles, the issuance of license plates therefor, and the assessment and collection of annual taxes thereon.

2. A division controlling the issuance, suspension, and revocation of driver's licenses and establishing necessary standards of qualification therefor. It would also function in the training and education of drivers and their examination to determine whether required qualifications for the issuance of driver's license are met.

3. A division for the enforcement of highway traffic regulations, with highway patrols and personnel qualified to handle the issuance of arrests, summons, complaints, warrants, etc.

4. A division for pretrial procedures with trained personnel to advise offenders as to their legal and constitutional rights and responsible for ascertaining the previous driving records of the accused.

5. A judicial division for the trial of traffic offenses and perhaps with jurisdiction in civil matters relating to damages arising out of highway accidents, and staffed with judges selected for fixed terms on an elective basis.

6. A division for postconviction matters with personnel staffed to conduct investigations and to compile records of traffic offenders. Its functions would also be to ascertain the mental and economic status of such offenders, their family responsibilities, and their mental attitudes. Reports on all matter should be submitted to the court prior to the imposition of sentence upon the offender.

7 A division to insure enforcement of penalties imposed by the court, including those involving the suspension or revocation of drivers' licenses, requiring motor vehicle repairs and replacements or removal of vehicles from the highways, requiring attendance at police traffic schools, and requiring psychiatric treatment where this is part of the sentence imposed and facilities for it have been provided for.

These suggestions, of course, are general. I do not imply that they are the best that can be offered on this subject. Many of them would require modification and some might require constitutional amendments. Certainly many new laws would be needed to effectuate them. However, if we are to meet the future prepared to solve the colossal traffic problems which will then present themselves, certainly changes along the lines suggested must be seriously considered.

COMMENTARY

PROFESSOR CHARLES H. BOWMAN
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I was very much intrigued when I saw the title of this session. The combination of the administration of justice and traffic regulation immediately raised in my mind the question of a possible inconsistency of terms, at least as traffic is being regulated and justice is being administered at the present time.

I am going to discuss Justice Gallagher's classifications and make some comments on them, but first I would like to lay a foundation in terms as to what it is we are discussing. Is it regulatory provisions, which are not crimes, or are we discussing crimes as such? If we are discussing regulatory provisions, as

opposed to crimes *per se,* then we have much more leeway in dealing with these regulatory provisions and those who violate them than we do if we are dealing with criminal law and crimes. The minute we designate an act as a crime, we trigger a vast amount of constitutional safeguards and procedures which must be followed.

I am not concerned with tort law—private wrongs—although perhaps today they do occupy most of the time of the courts. In Chicago alone jury trial cases are now 57 months behind schedule. This is almost five years. And approximately 85 percent of the cases on the docket are personal injury, including traffic accident, damage cases. Now, five years waiting for trial is a long time, and it is said that justice delayed is justice denied. So I would suggest that unless the legal profession clears up the morass of tort law in these personal injury cases, perhaps the Supreme Court of the United States will say that justice is being denied and tell the courts to correct it. Certainly if the Supreme Court of the United States can tell a state to reapportion itself for legislative representation it can tell the courts to render justice promptly.

We do not have this delay in criminal law, but we do have such a volume of traffic cases coming through the courts as criminal cases that justice is not being done. It is creating tremendous resentment on the part of the citizens, and even, you might say, a contempt for the law. What is it we can do? What is possible to correct this situation?

First of all, I would suggest we re-examine the specific type of conduct involved in traffic violations and determine which violations should be classified as crimes and which violations should be classified as breaches of regulatory provisions of the law. Regulatory provisions are, of course, not new in the law. As you all know, we have regulatory provisions in regard to corporations, various types of business activity, sales and commercial transactions. Violations of these statutes carry fines, withdrawal of licenses to do business, and various penalties other than imprisonment. The label we put on a violation is not important; it is either a crime or it is not a crime according to the constitution. If it carries a penalty which provides for possible imprisonment, the courts probably will say it is a crime regardless of what we label it.

We have run into this in the family courts, and we say that acts which constitute juvenile delinquency are not crimes. Therefore, the proceedings of the family court are not criminal in nature, and a juvenile is not entitled to the constitutional protections accorded one who is accused of crime. He is not being accused of a crime but a delinquent act. For that reason we have said he is not entitled to counsel unless the courts want to provide it, and he is not entitled to bail, or speedy public trial, or all the other constitutional safeguards. On the other hand, some courts—I think that the District of Columbia, Montana, and probably one or two others are the only jurisdictions that have gone so far to date—say that regardless of what you call these proceedings, a person may be deprived of his liberty for many years as a result of them. He may be sent to reform school or otherwise remain in the custody of the law, and since this is all possible, the courts have said it does not care what you call these proceedings, the person involved is entitled to all the constitutional safeguards of one who is accused of a crime.

I think that in classifying traffic violations and regulating conduct involved in traffic situations, we have to keep in mind the question of whether we want to

provide for imprisonment for a particular act or conduct. If we do, then we are making a crime of it with all the consequences that follow in regard to processing it through the criminal courts, and the accused must be accorded all of the constitutional protections.

There are other problems that arise in designating certain types of conduct as criminal. Some of these pertain to drafting the law itself, because a criminal statute must be specific in describing the acts that are prohibited. If it is too vague, the Supreme Court will say it is unconstitutional. So immediately we run into the problem of drafting language that meets constitutional standards in defining criminal conduct. I was interested in a film which showed a driver rolling back down a hill, trying to get his car started, until finally he backed into a truck. With what would you charge him? Surely he wasn't "following too closely," and we do not have an offense for "leading" to closely. Regulatory provisions do not have to meet such constitutional standards, but they have to be reasonable because they affect property rights and they affect privileges.

Let us consider the conduct which we decide warrants imprisonment and justifies being designated as criminal—reckless homicide, for example. How do we classify it in order to arrive at reasonable penalties? This is the problem that Justice Gallagher met head-on in his paper. Basically, as he has suggested, you have the intentional violator and non-intentional violator. However, as he suggested, there are degrees of criminality and responsibility, and this depends to a great extent upon the mental state. While we say that crimes are intentional, which indicates an affirmative or positive state of mind, and we assume that the term "non-intentional" indicates just the opposite, these latter types of conduct are a little more difficult to deal with in drafting legislation which makes sense to the people who have to comply with them.

We have many offenses which are criminal (they have increased strikingly in this century) which we call absolute liability offenses. Sometimes they are designated as "public welfare crimes," because it is in the public welfare that they be punished without regard to mental state. Possession of narcotics is an example of this type of crime. The Pure Food and Drug Laws furnish other examples of absolute liability crimes. Here the act alone is sufficient to warrant punishment. This type of crime has bothered a lot of us because of the increasing number that have been put on the statute books in this century It is easy for the prosecutor, of course, because he just proves the act was committed. He does not have to prove the mental state. Many of our traffic violations are absolute liability offenses, and perhaps they should remain so, but it would be my suggestion that the absolute liability offenses be confined to the very petty offenses —parking, for example—which do not involve reckless conduct of any type.

When we consider the affirmative mental states that are possible in defining crimes and different offenses, we have another set of problems. In connection with the revision of the Illinois criminal code, we found that we had no less than 164 different words to describe mental state—malice aforethought, deliberately, knowingly, willfully, wantonly, etc. Obviously there was much overlapping in the use of these terms, and yet we were asking the courts to determine what each one meant and when it applied to the vast variety of factual situations that arose. Each, in theory, described a different mental state, which had distinguishing features, and had been selected deliberately by the legislature in enacting the law.

We studied these terms in revising the Illinois criminal code, and compared it with the American Law Institute's Model Criminal Code, and the reasoning it contained. The drafters of the Model Criminal Code came to the conclusion that all mental states worthy of being designated as criminal could be reduced to four, and these were "intentional" (or "intentionally"), "knowingly," "recklessly," and "negligently." Intentionally meant having a conscious awareness of circumstances or that a particular result would follow from the conduct. Recklessness was a conscious disregard of a substantial risk, and constitutes a gross deviation from the ordinary standard of care required. Criminal negligence was defined as a failure to be aware of—not a conscious disregard, but a failure to be aware of—a substantial risk which constitutes a substantial deviation from the ordinary standard of care.

Notice that this type of negligence constitutes a *substantial* deviation from the ordinary standard of care, and does not arise on slight negligence only, which is sufficient for a tort action when there is *any* deviation from the normal standard of care. The courts generally have said that *slight* negligence is not criminal negligence, and there must be *gross* negligence in order to ascribe criminality to the conduct. What is gross negligence? The Model Penal Code says it means merely a substantial deviation.

With this in mind I studied Justice Gallagher's classifications very carefully, and I am convinced that his 12 distinguishable mental states could be formulated within the four different terms of intentional, knowing, reckless, or negligent. I think that in revising our criminal laws we should look at conduct in the traffic field particularly and ask whether we want to make specific conduct a crime, and if so, what mental state are we going to require, or whether we want to make it an absolute liability offense. Perhaps the decision as to whether it should be an absolute liability offense should come first.

These are some of the problems of classification. I think we should take another look at the types of conduct involved in our whole system of traffic regulation and the objectives we hope to accomplish by punishment. And I think we have to make a decision as to whether we are going to clean up the regulatory morass in which we now find ourselves If so, these are some of the substantive provisions which we have to consider in the drafting of traffic laws.

There are others in the procedural field where we have much more difficulty in dealing with traffic cases when they are handled as crimes, because our law enforcement and judicial system must accord the accused certain constitutional safeguards. Consider first of all the problem of arrest. Most traffic violations should not involve an arrest at all A ticket could be given notifying the motorist when and where to appear. In the Illinois Code we made this point specific by saying that the policeman, when authorized to make an arrest, could instead issue a notice to appear; and a court or magistrate, when authorized to issue an arrest warrant, could instead issue a summons.

Most of the people who are arrested for traffic violations are local residents. If they do not appear in response to their notice or summons, they can easily be arrested and brought before the court. There is not, to my way of thinking, any particular need to arrest every traffic violator. We do, of course, have a different problem with the transient motorist. What do we do with him? Do we give him a notice to appear? Do we fine him on the spot? Or what? Certainly he does not want to come back three days later, across several states, to answer

a traffic violation. He may disagree with the policeman that he has actually violated any law, yet we coerce pleas of guilty from transients because of the inconvenience of returning to answer the charge. I think a study should be made of this system, and an attempt made to work out some reasonable way of handling the transients without putting them through the criminal court process and coercing pleas of guilty.

Bail itself has turned out to be one of the greatest injustices ever foisted upon the public. It has become a racket, controlled by professional bail bondsmen. The lawyers and courts have abandoned their responsibility in this area, and bail bondsmen and the insurance companies collect millions of dollars each year. It contributes to corruption through kickbacks and other unsavory practices.

The bail system as presently administered creates hardships and inconveniences particularly for traffic violators. The system in Illinois disturbs me very much. We tried to ameliorate it in the new Code but the Illinois Supreme Court issued a rule which made it even worse.

Under the rule, a motorist who was arrested for a traffic violation could do one of two things. He could give up his driver's license—and if he was a transient he did not want to do that—or he could go with the policeman to the nearest police station and there deposit in an envelope addressed to the Clerk of the Court $25 in cash as bail. If he wanted to plead guilty and not appear, it provided that his fine and costs would be exactly $25 He could, therefore, merely deposit his money and go on his way without further trouble. But he had to do this in every case, or go to the inconvenience of going before a magistrate, or to jail.

Under this rule as originally promulgated there was not provision for issuing notices to appear, although it ultimately was amended to provide that the police might issue a notice to appear instead of going through the procedure of deposit. Since this option has been provided, the police have begun to use the notice to appear, and it seems to be working very well.

I am convinced in my own mind that most traffic cases can be handled without the necessity of putting up bail. I see no reason why we cannot work out some practical administrative system for handling traffic violators without subjecting them to the traditional bail system for criminals If we do not, we may expect that our citizens will continue to resent and regard our traffic law system with contempt

Aside from bail, we have the problem of speedy trial Should a motorist have to come back three days or a week later? Should he have to appear in court at all for minor traffic violations? How should they be handled? Of course, I am not speaking of the serious cases such as reckless homicide, but of the great mass of lesser offenses which could be handled differently from the way they are now. If we are going to administer true justice in the traffic regulatory field, I think it is absolutely necessary that we restudy these problems involved in designating conduct as criminal

It is not enough to discuss academically whether driving is a right or a privilege, or whether a given act is a crime or not a crime. I think we have to examine the specific conduct and make a determination as to whether we want it to be a crime, and, if so specify it as such and the penalty that shall apply.

If we do not want a certain act to be a crime, then we should make it clear that the law states a *regulatory* provision, and we should not put in an alternative

provision for imprisonment. I asked Mr. Montgomery how many sections of the Uniform Vehicle Code carry provisions for imprisonment, even as little as 10 days. He said that a substantial number provide for imprisonment because they are in the alternative—either a fine or up to a certain period of imprisonment. This simple phrase triggers the whole criminal law process, and I am not convinced that we need it to regulate the orderly flow of traffic on our highways and city streets.

DISCUSSION

PROFESSOR RICHARD ARENS
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The preceding discussion highlights the need for intensified research in the area of accident prevention and the sanctioning designed to serve that end. Driver personalities conducive to care or recklessness in traffic situations have but recently attracted the attention of medical and behavioral scientists. It does not seem bizarre to suggest that, given adequate scientific information, personality proclivities might be considered among other factors in such situations as driver's license revocation proceedings.

The attachment of medical and behavioral specialists to traffic courts does not seem unwarranted as a contribution to enlightened judgment. Perhaps such specialists can function initially as part of a research project addressed to the elucidation of personality variables which contribute to the traffic accidents.

Thus far at least, available medical and psychological data have not tended to provide our judges with an opportunity to make the most enlightened decision possible under the circumstances. To make such data available would not appear to be too high a price to pay to reduce the toll of highway fatalities which, as we know, is very substantial indeed.

We speak of penalties We must study the effectiveness of these particular penalties, and it has been pointed out by some of the participants that we must look further afield than our own borders to determine to what extent the penalties imposed in Switzerland or Germany, Scandinavia or Ireland, or for that matter, Indonesia, have had a significant effect in reducing the very thing which we are all agreed must be reduced.

At this stage I would merely like to add that enforcement is a two-edged sword. It consists of penalties on the one hand, and it consists of indulgences or rewards on the other.

I would respectfully differ with Justice Gallagher in one of his classifications. He speaks of driver re-education under police supervision, or the requirements of psychiatric treatment of drivers who are ordered to subject themselves to such treatment as a penalty. I would be inclined to view it as an indulgence, or a reward, meted out by a body politic concerned with the continued preservation of the health and welfare not only of the drivers, but of all those affected by his activity on the highway.

We might give some thought to the enlargement of the category of indulgences as distinct from deprivations, to put a premium on good driving.

Professor Lasswell, in one of his recent writings, has suggested that a driver who avoids accidents may be given a banquet and a badge by all his grateful neighbors who have survived the perils of traffic long enough to attend. Of course, this constitutes a highly informal sanction, but is it far-fetched to suggest that the legislature establish a positive honorific citation for individuals who have maintained unblemished and safe driving records over a period of years?

Or is it far-fetched to suggest that the courts themselves convene a ceremonial session honoring all those whose driving records entitle them to such honors? This would provide a reward in addition to the many other penalties which are unavoidable.

I am in no position at this particular stage of research to state whether the amount of monetary fines imposed for certain penalties are or are not effective in given instances. It is obvious that intensive research is needed in this area. I am in no position to speak of the effectiveness of imprisonment upon the reckless driver, though the studies of imprisonment carried out by the Federal Bureau of Prisons do tend to suggest that the rate of recidivism of those who have been held within a system which puts them in proximity with professional criminals, as is inevitable, has been an unfortunate one.

Perhaps the results have not been as happy as we might hope for. All these matters require the most careful study, and certainly a major grant is more than in order, in the light of the current cost of highway accidents, to determine what reward and what deprivation are most directly and rationally calculated to achieve the end in view.

PROFESSOR JOHN H. REESE, *Assistant Dean*
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The thing that impressed me about Professor Bowman's remarks in discussing Justice Gallagher's paper, was his use of the word "unrealistic." If I followed Professor Bowman correctly, he was calling for a basic reassessment of traffic law. In reading Justice Gallagher's paper, I felt I was hearing from a man who has to deal with people, and who was striving to predict the effect of a judicial decision on people. He seemed to be trying to devise a more effective means of doing justice with the tools he has been given, and in this respect he often had to use words such as "violator," and "sanctions." It is on this problem that I would like to make some comments.

Justice Gallagher's paper was a fine description of the problem courts have to face and what judges have to do to try to achieve justice as they see it. But let me suggest another viewpoint chiefly concerned with the philosophy which underlies the methods we are using to attempt to achieve our goals in traffic law. I think we might all agree on the goal, which is getting the traffic over the road safely. But the thing that interests me about this colloquy is that we have talked about "law" and "regulation" as if we all agree as to what these are and agree that we can proceed from there. Yet I wonder if we really are in agreement as to what we mean when we use the words "law" or "regulation."

I have noted some specific points which I have heard in these sessions and have tried to find in them the philosophy of traffic law which they express. I would like to mention some of the elements of this philosophy as I understand it.

We have heard expressed the philosophy that traffic law is a command. This follows from what both Justice Gallagher and Professor Bowman have said. It is a command from the legislature. It is authoritarian by nature and is to be obeyed. It is an exercise of the police power, and we couch it in terms of the criminal law, because in this form we think it is more likely to be obeyed. The more important the rule, the stronger the sanction is likely to be.

Motor-vehicle and traffic law depends not only on its commanding nature to make people obey, but also on internal consistency and predictability. We thus try to develop a set of statutes and case decisions which constitute rules and principles by reference to which people may determine in advance how they must behave. But in so doing we run the risk that precedent, logic, and symmetry may become our goal instead of moving the traffic safely.

They may become the objectives of legislatures instead of practical rules for dealing with the problems of the people that make up society. What I am saying is that our usual approach to motor-vehicle and traffic lawmaking is not so much concerned with the *effect* that the rules have on people as upon the rules themselves. The *command* rather than the *result* is what is emphasized. Those who write the statutes and regulations seem to have lost sight of the fact that people form society, and they allow their individual concepts of the traffic problem to serve as the basis for the statutes they enact.

Part of this attitude seems to follow from the fact that in law school most of us were trained in the deductive logic method of thinking—through the case method. But there is more to the law than logic, as Justice Holmes reminded us in his classic comment that the life of the law has not been logic but experience. Here is where we must face the question Dr. Goldstein raised with his illustration that people and not rules form the basis of society.

What is meant by "experience" in the law? It seems to me that, for the law, "experience" is expressed in the customs, interests, and outlook of the people. These do not always have the symmetry and consistency of deductive logic, and so the lawyer's training may color his thinking—and may even close his mind to the practical effectiveness of the experiential approach.

When this happens, the result may be what has often been described as slot-machine justice or mechanical jurisprudence where you simply plug the people into the situation and crank out the decision. This contributes to rigidity in the law, while the society to which the law is expected to apply may have changed greatly.

I am not saying that the need for logic and consistency in the law should be entirely ignored; I am saying that we have two different viewpoints which must be kept in balance. People who are asked to obey laws and regulations care little about logic—they simply want to know how that law will affect them.

It has been noted that we have a rather cynical attitude toward human nature It seems to me that this observation is an accurate description of what we in fact have in our current approach to traffic law. We seem to emphasize the command at the expense of the effect of that command on the individual. Maybe this grew out of the nuisance background of the automobile that Mr. Hennessee mentioned

And, as Mr. Morony said, possibly we should look at the law as a way of doing something for people instead of doing something to people.

I think we need to take this command of the legislative philosophy of traffic control and examine it in the context of contemporary society. Mr. Rockwell mentioned that a study showed 50 percent of the suspended drivers in Michigan continued to drive thereafter. It was also mentioned that the prosecutor has only a 50-50 chance even in a good case, because jurors look at traffic cases a great deal differently from the way prosecutors do. They apparently consider the effect of the decision instead of its logic, and visualize themselves in the shoes of the accused

We have heard that one study showed there were 3,500 actual violations for every single arrest that occurred. We need to know more about why this great disparity exists. Is it because our current approach is unrealistic in the context of a highly mobile society? Perhaps it should be studied in relation to the using of conditional licenses to regulate behavior Persons who have demonstrated that they have not met the standards set out for driving, through whatever process has been set up by that state, are put back on the road conditionally to avoid a hardship where an economic necessity is concerned Is this not inconsistent with the command philosophy?

One gentleman reminded me yesterday that someone with political pressure may have gone to the legislature and opened this device up to a great many undeserving drivers merely in order to get one other individual back on the road. This, of course, is a risk which must be assumed under the political process we have in our state governments.

A final point on the questionable practicality of this command of the legislative thinking is in its relation to the idea of the automobile as a nuisance. It would seem to me that we have come full circle. Can you imagine a man driving a wagon and team across Key Bridge during a rush hour? Can you imagine his attempting successfully to persuade a policeman that the automobiles on the bridge were the real nuisances, that the horse and wagon are the natural mode of transportation, just as they had always been in this country before the motor vehicle was developed? This is obviously ridiculous, but it is no more ridiculous than the philosophical premises on which many of our traffic and motor-vehicle laws are based.

The point of these examples is, of course, that we should try to become more realistic in our system of traffic control. It is obviously unrealistic to expect traffic courts to be effective if they have to deal with people who don't obey and don't see any sense in this system that we have now.

On the other hand, I would mention another view of the law. This is the philosophy that law primarily gives effect to our social interests instead of issuing commands to us. This is what Dr. Nutting seemed to be suggesting when he spoke of a "right" as an interest protected by society. There are public interests and private interests, and these sometimes conflict. Through law we balance conflicting interests and give effect to that interest which does the least amount of harm to the total scheme of social interests.

This philosophy visualizes law as a device for reflecting what the community wants it to reflect. As Professor Goldstein said, people and not law are the basis of society, and so the law reflects the interests—public and private—of people!

Why can't we give effect to the interests of society by approaching the function of law in this way rather than as something more than a series of legislative commands? Legislatures say they do this, but it has become extremely difficult. What groups are most vocal when the legislature meets, and what social interests are recognized? I doubt whether the individual interest in motor-vehicle operation is as clearly articulated as most special interests articulate theirs.

In short, this approach to law is most concerned with the effect of applying the law and not only its logic and symmetry. It does not unduly emphasize the enforcement of compliance, for it is an attempt at realistic recognition of what is actually occurring in society. Therefore, sanctions are not so important to this philosophy. There is more flexibility in it, for it does not concern itself solely or primarily with deductive methods of logic for determining the propriety of a particular statute.

For the future, we should recognize that we have seen demonstrated two widely differing philosophies of law. Recognition of these polarities should aid our understanding as to why there is not complete unanimity in our approach to traffic control through law.

LOUIS LAUER, *Director*
Project for Effective Justice
Columbia University Law School

I would like to begin by reading a quotation I found in a monthly letter from the Royal Bank of Canada. Actually I have been interested in the experience of other countries and was really surprised to find that the Royal Bank is now concerned with our highways and our traffic. The quotation deals with a boast made by the Roman Emperor Hadrian, almost 2,000 years ago:

> . . the infamous crowd of carriages which come to our streets for this luxury of speed destroys its own aim A pedestrian makes more headway than a hundred conveyances jammed end to end along the twists and turns of the Sacred Way.

So the problems which we have been discussing are not unique. They really have a long history and, I suspect, will continue to call for solutions for many years to come.

In another part of this letter some sage was quoted as having said that there were just as many careless drivers 40 years ago, but the horses had more sense. All of which, I suppose, provides a sort of footnote to the paper on the difficulties of regulating individual drivers.

To turn to my more general comments, the first thing I would like to deal with are the limitations on the formulation of any kind of program. These, in my opinion, are limitations which are not going to be resolved by research; they will limit the effectiveness of any research. The first one has to do with the cost of implementing any program. A program to modify highways and enlarge the area of safety, to increase the administrative personnel available for implementing a program, and to eliminate delays in the judicial processing of cases will cost money. This money, which is obtained largely by taxes, will have to be appropriated by legislative bodies which are made up of people who have to run for re-election and have to make many hard decisions. These decisions are not between something good and bad, but between conflicting good objectives, such

as more schools or more highways, more personnel for administrative jobs or more policemen for the enforcement processes. So, as a practical proposition, even the most ideal program, based on faultless research in the world of affairs, is going to be limited by the amount of available money. Many governors who held office four years ago and do not hold office now know quite well that the job of raising this money is a thankless one.

The second limitation has to do with the legislative awareness of the impact of motor-vehicle laws and amendments to the laws. The legislators who run for re-election every two years, or possibly in some states a longer period than that, are acutely sensitive to the impact of the statutes they enact to people in their day-to-day activities. I do not think that these legislators act as thinking machines or that they are terribly concerned about the possible inner consistency of the statutory provisions they enact. Perhaps they should be more concerned about it, but in any event we can be sure that a program will have to pass the two tests of financial practicality and political acceptability. And I think this is proper in a democracy.

The third limitation has to do with the nature of the choices that are made, and as I mentioned before, these are choices not between something that is obviously good and obviously bad, but between two good things. When the officials of, say, Westchester County think about putting up a safety light, they must decide whether to protect children who run into the street, or to accommodate businessmen who want people to stop as they drive by so they can see the store windows, or promote the public interest in having traffic move freely off the expressway. There are other instances of this sort of conflict between several "goods" that present hard questions of judgment. Research people such as myself are not so impertinent as to suggest how to resolve them, although as citizens we have our ideas as to what is desirable and what is not.

All of which leads me to read the last quotation in this letter from the Royal Bank of Canada. This is a quotation from a planning report for the rebuilding of down town Los Angeles: "The pedestrian remains as the largest single obstacle to free traffic movement." Obviously he does, but there is the conflicting good of having pedestrians using the streets and motor vehicles depending upon these same arteries for circulation of traffic.

Finally—if I may list what is to me the fourth and last unavoidable limitation on any program which involves the use of legislation—it is the ignorance of the law and the effect this has on the shaping of legislation and its implementation. I do not believe this is simply a matter of the law books containing highfalutin phrases, or the technical language of lawyers. I wrote a law a few years ago called the New York State Family Court Act, and it was written in that language. The various social workers who were not lawyers but who had need to understand the law told me that they could sit down with this law and read it, find what they wanted in the index, and had no problem at all in using it. To them the statute was understandable, and had been deliberately written in every-day language. But if you were to speak to the thousands of juveniles who pass through the Family Court, and the more thousands of adults who have contact with some part of the court's processes, they have never once opened up the Family Court Act of the State of New York, and they couldn't tell you what it says there, even though after you show it to them and ask them what it means they would be perfectly able to do so.

I think this problem applies even more in the motor vehicle field. It is not solely a matter of technical language, or elaborate classifications, or many rules. I confess that I have never opened up the motor-vehicle code of my state and looked at the statute. I did study a booklet on the subject in order to pass the test to get my license. But I am not familiar with that statute and I am a lawyer. I don't believe you are going to persuade the millions of drivers in this country to open up a statute book cast even in the simplest of language to find out whether they have the right-of-way or the other car has the right-of-way at an intersection. I think it is an unrealistic expectation.

But what this means—and most if not all legislators recognize this—is that legislators in casting the law try to reflect the ordinary behavior of drivers. So they write the law in the way they think most drivers will act, and everyone knows that if they behave as most drivers behave, or should behave, their behavior will conform to what the statute says. If it doesn't, then there is presented a problem that is often met by the discretion of the police officer enforcing the law or by the prosecuting attorney's or court's flexibility in determining what the facts of the case are or imposing only the very minimum punishment.

When you begin with these built-in limitations—money, political pressure, the necessity to choose between competing goals, and the ignorance of the law—then the question is how can you work out a plausible program for not simply moving the flow of traffic, but fitting that into a whole complex operating society which doesn't exclude pedestrians. Of course, I do not know the answer, but I want to suggest a perspective that I think makes sense in terms of the sort of research that I think lawyers are equipped to do and probably should do in consultation with sociologists and sometimes people from other branches of the behavioral sciences, as my organization at Columbia University does in all of its studies.

As I understand it, Justice Gallagher's scheme was not designed to serve as a legislative program. That is, he was not proposing that the penal law and motor-vehicle law be recast in terms of these 12 classifications, but perhaps ultimately this should be done. I think his focus was on the exercise of judgment and the adjudicatory choice. That is, when the matter in all of its detail is before a judge or administrator, these would be guides for the exercise of their discretion under the broad range of powers that currently are granted.

My purpose is somewhat different from Justice Gallagher's. It is more abstract and designed to suggest a method of viewing the whole proposition. The first thing I would note is that there are three bodies of law that have something to do with the movement of traffic. One is the civil law, basically the tort law, that deals with the question of when a driver may recover damages in the form of money for property injury or personal injury arising out of an automobile accident. Some have said that the current system for determining who should pay whom for the damage to my car and personal injuries arising out of an automobile accident requires that we first decide who was at fault and who wasn't, and thus the amount of damages awarded is largely in the discretion of the decider of fact, typically the jury.

Others have said that the threat of having to reach into one's pocket and pay the bill serves as a deterrent which supplements the deterrents provided by the criminal law and administrative regulations relating to faulty driving. I am very doubtful about using the civil law for this purpose. Most drivers today, I am

sure, do not pay the money from their own pocket; their insurance company pays, ar·1 this means that the deterrent effect of this device consists of the fear that one s premium rate may go up slightly. I think this is all that is left of the possible deterrent under a system of almost universal insurance coverage.

I thir :, in short, that the body of laws dealing with the allocation of risk or the payı ent of compensation should be shaped in terms of who should pay when, where, : ıd how, rather than in terms attempting by that means to regulate the flow of affic. If I am right in that conclusion, we have two possibilities which I woulc like to mention. One is a system of administrative regulations; the second a system of judicial regulations.

The ı ason we have been speaking about regulations is precisely because the automol le is generally a tool of pleasure that we think of as being subject to restraini and because there ıs a need for some restraint to avoid these unpleasant consequ ıces of unrestrained driving. Thus the law is stuck with the ugly job of talkir , about limitations, penalties, sanctions, and similar things. I think the basic jo' of the legislature is to decide on the allocation of functions between the adminis ator and the court

As fa as the administrative agency is concerned, I don't think anyone has any dou t that it should be charged with responsibility and given the authority for testi g the qualifications of applicants for licenses to drive automobiles. Whethei ou call a license a property right or a privilege, everyone is agreed that when it omes to testing the qualifications to drive there must be a practical test of physi al and mental condition and knowledge and driving skill. Once you pass the ualifications test, it is a matter of assuring compliance with a reasonable body of ules. I am not competent to say whether the body of rules in my state is reasoı ble, but assuming that it is, it becomes a question of enforcement. The administ itive agency generally is given two powers to assure enforcement.

One i the power to suspend a license; the second is the power to revoke a license. Normally there is a statutory requirement, whether or not it is also mandate by the constitution, that these sanctions of suspension or revocation of a lice e should not be imposed except after a hearing with due notice and an opportu ty to contest the controversial charges.

The t rd possible method of regulating this matter by administration is in the train g of those who have been in trouble before. This may also involve the retrainin or possibly as a preventive measure, undertaking some sort of more systemat and formal schooling, and making this a requirement for making applicati ı for a license. When programs of this type become involved, as I think th do when it comes to the matter of psychiatric rehabilitation, we open up the v ole question of costs and whether the money spent on costs is more beneficia y spent there rather than on something else the legislature has in mind.

We sl uld not, of course, overlook the fact that there is a fair possibility of improvir judicial regulation of motor-vehicle use. This raises the whole question of the u ity of the criminal process to achieve not simply the goal of moving traffic, b the other goals of public policy associated with motor-vehicle ownership and ıse. At present the courts are authorized under the law to deal with certain t oes of driver behavior, and I am speaking now only about moving offenses.

I thin that parking offenses and non-moving offenses raise a completely different et of problems, which are largely the same as many others which a

government of a metropolitan area deals with in handling a large mass of cases on a limited budget and under tremendous pressure. But as far as the moving offenses are concerned, they are dealt with either as a motor-vehicle offense which is not a crime, or they are dealt with under the criminal law. It is at this point that Justice Gallagher's paper really has its full force, for he has pointed out the difficulties with which our traffic courts must work in sorting out and deciding how to deal with the extremely heterogeneous mass of acknowledged traffic law offenders who annually are apprehended. His proposal to have a pre-sentence investigation report submitted to the judge, and then to use a set of categories as guides in making a decision as to what should be done in any given case, deserves serious study by legal and sociological researchers.

VICTOR J. PERINI, JR., *Staff Associate*
Laws Division
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I would like to make a preliminary comment on Professor Arens' remark about rewards for good driving conduct. There are instances where the accumulation of points against a driving record for violations of motor-vehicle laws are weighed in a framework of the driver's conduct within a certain period just passed, and if within that recent time interval, the driver has had a good record, points accumulated prior to that period are in a sense forgotten when the administrator under the point system law is called upon to look at the record of a particular individual.

This is a form of reward for violation-free driving for at least a specified period of time. I must admit, however, that if given a choice between the several types of rewards suggested by Professor Arens, I might be tempted to subscribe to the banquet idea.

Referring to Justice Gallagher's paper, I was extremely interested in his distinction between the causes and consequences of intentional and non-intentional violations. I think they are valid distinctions. However, I am troubled by the non-intentional violator who appears before a court of law because of a driver failure resulting from inexperience, emotional instability, mental and physical handicaps, and similar causes. I feel strongly that determinations in these areas are more properly within the jurisdiction, so to speak, of other disciplines, such as education, medical sciences, social sciences, or perhaps the licensing authorities working together with these disciplines in resolving these vexing problems.

We tend to breed confusion in the public mind when we require a court to decide that a driver is guilty of violating the law—when perhaps he never should have been placed in the circumstances—because of incompetence, which enabled him to commit such a violation. It is somewhat akin to spanking a child and *then* telling him he shouldn't use crayons on the wallpaper. Perhaps we should consider this type of non-intentional violator in a context of prevention rather than punishment.

When we turn to the intentional and reckless type of violation, I agree with Professor Bowman, who pointed out that certain of these offenses are criminal by their very nature, and this violator should be subject to the full impact of the law. I would like to see the research done to determine whether we reasonably

can make distinctions between such serious offenses and those which can be considered minor offenses. As a rule of thumb, however, those offenses which constitute grounds for mandatory revocation by statute can be classified as serious offenses.

These serious offenses can remain subject to court consideration, whereas the minor offenses could be dealt with by some other means, possibly in the nature of an administrative procedure. However, we must always be aware of the dangers inherent in any procedure that does not grant the full protection of the court. Utmost caution would be necessary in the development of any such policy, which would permit this type of treatment for violations, because public misunderstanding or resentment create potent voices which soon are heard in legislative halls.

I take issue with Justice Gallagher on one thing, or perhaps I am saying the same thing he says—in a slightly different way. He indicated that there should be some financial penalty or impact on the violator whose action results in injury or damages to another. He suggests that this financial hurt would have a salutary, or deterrent effect on the violator. Philosophically, I cannot fully agree with his position.

Are we concerned as a society with the innocent victim being made whole, or are we more concerned with punishing the guilty violator? The principal justification for inflicting greater fiscal retribution on the violator would seem to lie in its value as a deterrent against future violations. What then is the impact of this concept on the financially irresponsible offender? On the other hand, the financially responsible violator maintains this socially desirable status at substantial expense to himself by means of insurance of some sort. Would this man question the purpose of his expenditure if in fact it didn't give him the protection he thought that he was buying? And in turn, how would this thinking on his part affect our general concern for the innocent victim of an accident? Furthermore, we invite a certain amount of confusion when we attempt to assess civil damages within the context of a criminal proceeding. I would approach this issue with the greatest caution.

Many other provocative questions have been raised here today. Professor Arens suggests that punishment in general practice does not accomplish what it is supposed to accomplish. This concerns me as I look at Justice Gallagher's presentation, and Professor Bowman's comments. Is the punishment approach to traffic violations really using the wrong means to achieve a desirable result? Having established our objectives, can we reach them by inflicting more severe penalties on those who do not conform? Or should we perhaps look to a system which employs less severe penalties, but couples them with some form of reorientation or rehabilitation of the offender? If there is merit in the latter approach, substantial research would have to precede any decisions, and this research should involve not only the legal profession, but professions dealing with motivation and behavioral sciences.

Another basic question is raised. Where does the law fit into the total context of a motorized society? We assume, and we hear it said often enough, that the citizen of a state has the legal obligation to pay his taxes. Some of these moneys are used in building the highway system. If so, it would seem to follow that this same citizen has at least a qualified right to utilize these highways, or otherwise benefit from their use. Therefore it seems to me that the direction of the law

should be to assist this citizen in obtaining these uses and benefits. Is this today's direction?

Here we come back, in a way, to Mr Morony's question in his opening remarks: Is the law designed to do something to people or for people. In this context I wonder if perhaps we should give some very serious thought to the entire question of sanctions Is our system of enforcement aimed at putting people back on the road or is it aimed at taking them off the road? What should be our direction in this respect? If it is to put them back on the road, perhaps our criminal law procedures are insufficiently flexible to achieve this, as they are presently set up. I don't pretend to have any answers to this question, but ultimately, I think we will have to come to grips with it.

Another problem (which I believe was mentioned only once) is the problem of communication. It seems to me that the law has a duty to tell people what to do, and how to do it. It must help them to help themselves. Why then should these laws be written in such a way as to require the services of a Philadelphia lawyer to interpret them?

Perhaps in drafting legislation in this area of such immediate concern in our daily lives, thought should be given to drafting laws in terms similar to those used on Madison Avenue, rather than from a law dictionary. I cannot say that this can or should be done, but it seems to make sense that law should be placed on the books which can be read and understood by the average citizen, at least in the area of rules of the road. We seem to be condoning our present approach when the licensing authorities are compelled to prepare relatively simple manuals, which are designed to inform the driver of pertinent laws which will affect his future conduct, for his use in preparing for a written examination on the subject. If he can understand the principle of law as set forth in simple terms in a manual, why shouldn't he be able to do the same thing by reading the law itself? The mere existence of such manuals seems to suggest that something is wrong.

Mr. Lauer made some interesting comments on the futility of such an approach when he discussed his drafting of the New York State Family Court Act in simple, every-day language. He suggested that even though these laws were easily read and understood, the thousands of persons coming under the effect of this act took no interest to even bother with reading it. He did, however, indicate that the social workers who were required to know this law in their work needed to know what it meant, and they were very appreciative of Mr. Lauer's efforts in making the law an understandable document.

It seems that this same "need" justifies a proposed simplification of the statutes. The driver needs to know the law because, among other things, he has to pass an examination concerning it before he is licensed. There is no evidence to the effect that the people subject to the New York act "need" a similar working knowledge of its contents in order to qualify for its benefits.

One thing that was not mentioned, and which concerns me, is the lack of young people present at this colloquy. Most of us can recall the so-called good old days when automobiles were not so common, and I wonder if we do not all carry some unconscious attitudes about automobiles which stem from those early years? Certainly the youngster who lives in our present society, with a television in his bedroom and a car or two in the family garage, and a jet flying overhead, is likely to have a different viewpoint about these things than we do. And when

we speak of planning for the future and setting the pace for tomorrow, maybe we should know what our youngsters think about things.

Our grandfathers and great grandfathers were not very different in the way they looked at life. We differed somewhat, because of the impact of modern life on our attitudes Our children are growing up in a far different environment. I can recall the Depression days when a nickel was a substantial sum of money. My six-year-old son doesn't know what to do with a nickel, because everything in his world seems to cost a dime or more. He "needs" things which weren't even known in my day. And we sit here planning his world, in a sense. Are we being realistic in drawing blueprints for his future with our pencils?

Perhaps the law should recognize these facts of contemporary life. Perhaps in creating and teaching law we should project ourselves to some extent into his frame of reference, try to look at tomorrow through his bright young eyes. I think it would be an attractive and profitable avenue for research in determining how this can be done.

I have often heard a number of terms that are familiar to lawyers: "regulate," "restrict," "punish," "fine," "control," "enforce " We have been applying these terms to the ownership and use of motor vehicles. Yet, to the young person of today the motor vehicle represents anything but these things. He is growing up with a feeling that the motor vehicle is an indispensable part of his life and his means of mobility in a society and economy which is based on mobility and movement If we are talking about motor-vehicle law for the generations that are to come, maybe we should start talking about the types of functions which that generation will want the law to perform. If so, perhaps we should be thinking in terms of guidance, assistance, service, and helping to make possible the full and safe use of cars Personally, I hope this colloquy may be the starting point from which we will view the field of motor-vehicle law in this context.

YULE FISHER, *Research Counsel*
National Highway Users Conference

Justice Gallagher has made a real contribution with his carefully structured presentation on penalties I associate myself with previous commentators as to the need for additional research in this area.

The policy statement of the National Highway Users Conference is that the users of American highways are entitled to use those highways with safety, efficiency, and convenience. This is a guiding thought throughout our work.

My comments are rather general on the future of research and the relationship of this particular colloquy to needed research on motor-vehicle and traffic law.

The timing of this meeting is very fortunate in view of another event. This morning Carl Saal raised the question of the Uniform Vehicle Code, which is, of course, the chosen instrument by which we attempt to move forward in bringing the law as a standard before the several states I think that one of the first influences of this colloquy may be in the future meetings of the National Committee on Uniform Traffic Laws and Ordinances.

The National Committee has recently restructured its subcommittees to meet more efficiently and expeditiously many of the problems that are being discussed here. Within a short time these subcommittees will meet to consider proposed changes in the Uniform Vehicle Code and Model Traffic Ordinance. It is our

hope that in these meetings not only will the wisdom of the committee members be brought to bear on these very problems we are discussing now, but also that the wisdom and insight of disciplines other than that of the law will be brought in. So, as Chairman of the National Committee on Uniform Traffic Laws and Ordinances, I would at this time extend an open invitation to any and all of you who have a contribution to make in the development of the Uniform Vehicle Code to bring your insight and experience to the benefit of the National Committee.

There has been a great deal of intellectual pollen cast on the wind these past two days. To use a metaphor of the biological sciences, the question of how fruitful this meeting will be depends upon how much of this pollen reaches its objective. I have mentioned one great opportunity in the Uniform Vehicle Code. I think a research program dedicated to this end should start by finding out what our existing law is and how effectively it is working. As has been pointed out here, it is a major job merely to say what the law is in 52 jurisdictions.

There is also the problem of eliminating gaps and conflicts. Some have suggested that this problem might be solved by the Draconian solution of Federal intervention. This, of course, is a possibility which, like Damocles' sword, is hanging over us and may fall at any time. I suggest that the discussions we have had thus far show it is not wise, from the standpoint of our knowledge of what is needed, for the Federal Government to take any action which will stop or paralyze the progress we are making in the solution of these problems in the states, and so make the ultimate solution more difficult. A very important reason is the point made by Justice Holmes when he said that it is desirable to have states serve as laboratories for the solution of these problems. Certainly in the development of motor-vehicle law it is desirable to have just as many laboratories as we need.

A second point about legal research in this field is the need for study of the experience of the law on the books. Even more importantly, laws about to be enacted and which are being considered by the legislatures should be evaluated carefully. In many respects, we still use very primitive ways to evaluate the experiential basis of motor-vehicle law.

In pointing out work for the Highway Research Board's new Committee on Motor Vehicle and Traffic Law, I think that with all this intellectual pollen going around we have a question of establishing priorities in research. Certainly some of the questions we have taken up are life-and-death matters which deserve attention as quickly as possible. There is also a question of the availability of research resources.

It has been pointed out that the lifeblood of research in many cases is the money available. The Federal Government has in the past financed a good deal of useful research through the so-called "One and One-Half Percent Funds" of the Federal-aid highway laws. The initiative in use of these funds is in the hands of the highway departments, whose orientation and outlook is primarily in the direction of solving highway rather than motor-vehicle and traffic problems. State motor-vehicle departments do not have this type of resource or resources for their research needs. I can understand how this situation arose, but I believe that with the available research funds it should be possible to achieve a better balance in the allocation of financial backing between the highway and the traffic on the highway.

Personally, I believe this colloquy has provided the opportunity for a very effective cross-fertilization of the various disciplines that are concerned with motor-vehicle and traffic laws. I would like to pay tribute to the Automotive Safety Foundation and the Highway Research Board for making this gathering possible, and I believe that we have at least accomplished a happy mating if not a happy marriage.

GENERAL DISCUSSION

Professor Bowman.—Mr. Lauer has expressed some of the things I had in mind. When I suggested that many violations could be described as regulatory offenses, I was not restricting it to petty offenses only. I had in mind that an administrative agency would have as one of its most effective sanctions the power to revoke licenses. Thus it would be possible to transfer to the regulatory category some of the more serious offenses that now have to be administered in the criminal courts. My objective would be to get them out of the criminal court process by describing them as something other than crimes. Once they are out of the criminal courts, they could be handled by an administrative tribunal, such as we have in workman's compensation and labor fields, and the criminal courts would be freed of the great volume of cases which are now clogging their dockets.

Mr. Perini made one comment which involves this same point. In regard to our use of the words "control" and "regulate," criminal law traditionally has been defined as an instrument of social control. So when we designate these violations as crimes by definition, we mean that we are controlling social behavior. My point is that I do not think they should be so designated. I think a large area of conduct in the traffic field could be transferred over into these regulatory categories, and not come within this concept of control, which involves us in the criminal process whenever we include something in the criminal code.

Professor Arens.—Mr. Justice Gallagher, do you feel, as a result of your judicial experience, the need for more clearly formulated rules governing traffic regulations, and do you feel that there might be a diminution of traffic violations if the rules of traffic were more clearly formulated in language readily comprehensible by the layman?

My second question is, do you feel the need for periodic instruction in such rules as distinct from merely the haphazard instruction which precedes the taking of the driver's license test, followed by other periodic semiannual or biannual physical or mental checkups of drivers to make sure that they are truly fit?

Justice Gallagher.—As to the first part of your question, regarding the coverage of present traffic regulations, the field is covered by municipal ordinances and statutes, and where the statutes are silent possibly our Common Law requirements might come in. As far as the statutes' language is concerned, I believe most of them are quite clear. It is not a complex matter to understand the usual rules governing the flow of traffic, and most people really do know this even though they have not systematically read the statute book. I don't think that the courts have any great difficulty construing these statutes because of ambiguities.

As to whether I believe there should be periodic physical checkups, I assume you are asking whether every holder of a license, regardless of his age, should periodically go in to be examined I recognize that quite possibly this is an extremely desirable idea as far as driving is concerned, but I am afraid that you would have a hard time getting that enacted by any legislature. Each legislator would think of himself as required to pass these tests, and perhaps in his own mind there is a shadow of doubt as to how long he can do so. Theoretically, it would be a fine thing if we could do that, but practically, it presents a major political problem. In my home state, the Minnesota Safety Council has recommended that after either age 60 or 65 drivers must go in and take certain physical tests, particularly with respect to eyesight, and I think this has a better chance of becoming enacted than a more general periodic examination program.

Mr. Lauer.—I think the function of the law books is not only to instruct those who are to be regulated as to what the regulations are, but also to limit the authority of other government officials. In some ways, the regulation of authority of the department of motor vehicles by the courts on judicial review serves a very useful function in limiting arbitrary behavior even though the man in the street does not know what the statute says

As far as avoiding accidents is concerned, I have been engaged in a study of arbitration as it is applied to settlement of personal injuries arising from automobile accidents, and I have watched a great many hearings to get a sense of how the arbitrators deal with the issues, what the rules of evidence are, and what the recurring questions are. In the course of this, I have been getting a sense of what happens in the settlement of these automobile accident cases I believe it is not always a general lack of intellectual capacity, or even lack of some physical ability, such as sight, that is the accident cause. Sometimes what happens is that a driver, fully aware of the rules and perfectly able to drive in terms of his coordination, gets distracted by something, or is thinking about something else at the instant when the accident could have been avoided. I can't think of any body of rules or regulations or car design or highway design that is going to eliminate that sort of situation. This is a fact which I think needs to be kept in mind when we consider what can be accomplished by the criminal law, or even the law generally, in connection with traffic accidents.