Tape 4 - Side 1 - 1,310 to end
Side 2 - 1 to end
Tape 8 - Side 1 - 1 to 265

COMMITTEE ON JUDICIARY
Subcommittee on Adjudication

January 9, 1974

Members Present: Representative George F. Cole, Chairman
Senator Elizabeth W. Browne
Senator George Eivers
Representative Lewis B. Hampton
Representative Norma Paulus

Excused: Senator John D. Burns

Staff Present: Mr. Donald L. Paillette, Project Director

Meeting with Municipal Judges: 10:00 a.m. - 12:15 p.m.

Others Present: Hon. Wayne M. Thompson, Municipal Judge, Salem
Hon. William Galbreath, Municipal Judge, Milton-Freewater
Hon. G. F. Rakestraw, Muncipal Judge, Redmond
Hon. Richard D. Curtis, Municipal Judge, Springfield
Hon. Louis Giovanini, Municipal Judge, Beaverton
Mr. J. M. Mattis, Legal Consultant, Bureau of Governmental Research & Services
Hon. Yvonne Addington, Municipal Judge, Tualatin

Public Hearing: 1:30 p.m. - 4:45 p.m.

Others Present: Ms. Vinita Howard, Motor Vehicles Division
Hon. Lee Johnson, Attorney General
Mr. Gil Bellamy, Oregon Traffic Safety Commission
Mr. Dan Goff, Assistant District Attorney, Lane County
Mr. Robert Brasch, President, Oregon District Attorneys Association
Hon. Thomas Hanson, District Judge, Marion County
Hon. Philip Abrahams, District Judge, Multnomah County
Mr. Holly Holcomb, Superintendent, Oregon State Police

Agenda: Approval of Minutes of November 15, 1973
Traffic offense adjudication procedures

The meeting was called to order by Senator Browne, who presided until the arrival of Chairman Cole, at 10:00 a.m. in Room 14, State Capitol.

The minutes of the meeting of November 15, 1973, were unanimously approved.

Meeting with Muncipal Judges

Mr. Don Paillette indicated that arrangements had been made through the offices of Mr. James Mattis for a number of municipal judges to meet with the Subcommittee on Adjudication for an informal discussion on traffic offense adjudication procedures and current procedures in municipal courts and problems that might exist. He stated that the subcommittee is interested in hearing the opinions of the judges on the New York administrative adjudication system, some of the other methods of dealing with traffic offenses that have been discussed and any change or modification in current practices in which they might be interested.

Judge George Rakestraw, President, Municipal Judges Association, introduced other municipal judges attending the meeting to the subcommittee members.

Mr. Mattis stated that the judges in attendance were there to present their opinions of the existing procedures in dealing with traffic offenses and to answer any questions relating to present procedures and possible alternatives.

Judge Rakestraw, in answer to a question by Representative Paulus, expressed the opinion that because of geographical differences in Eastern, Central and Western Oregon diverse problems exist. He pointed out that distances between cities and counties are much greater in Central Oregon than the Willamette Valley and that in Eastern Oregon distances are greater than Central Oregon. Because of differences in population density, the volume of citations varies among the three areas. Judge Rakestraw informed the members that Redmond is a city of 4,000 people in an area of about 7,000 or 8,000. He said that during 1973 there were 415 citations issued and 20 trials conducted and that most of the trials were without attorneys. They were more like informal hearings--guilty pleas with explanations. One jury trial was conducted, he said, dealing with a DUIL case, 38 citations were issued for DUILs and there were no appeals.

The judges were in agreement that rural areas deal with very few appeals in either municipal courts or district courts.

Statistics were presented by Judge Richard Curtis to the subcommittee pertaining to Lane County dealing with cases processed during July through December 1973. He mentioned that there are very few appeals for the number of cases and that very few of the appeals are ever tried. A large number of the appeals, he said, are dismissed by the defendants after giving notice and some are dismissed by the state before trial. It was his opinion, Judge Curtis said, that appeals, according to the statistics, are not a problem. A copy of the Lane County statistics is attached as Exhibit A.

Judge Wayne Thompson, Salem, added that during 1973 he had 1,406 trials with 44 appeals filed. He said that he wasn't certain how many of the appeals were prosecuted.

In Beaverton, Judge Louis Givanini reported, there are presently six appeals pending. In 1973, he said, there were 198 arrests on DUIL charges with 161 convictions, 31 reductions to reckless driving and two dismissals.

He expressed the opinion that there probably isn't a judge in the state who has a problem with appeals, except maybe for Eugene. A copy of the Beaverton statistics for the year 1973 is attached as Exhibit B.

Judge Giovanini stated that efforts had been made in the past to eliminate municipal and justice of the peace courts in Oregon. Except for the Portland metropolitan area, the proposal didn't seem to be practical. He said that distances in Eastern Oregon, for example, were simply too great for such a proposal to be workable.

Judge Rakestraw expressed the opinion that the New York administrative adjudication system seemed to be geared for a particular problem dealing with a large number of traffic citations and a cluttered court docket. He stated that Redmond simply doesn't have the same problem, nor do other cities in Central Oregon.

Judge William Galbreath stated that he is concerned about making changes in the name of progress. Umatilla, he said, has a district judge receiving a salary of $26,000 per year who does the same work formerly done by an individual for $3,000. He stated that he handles about 1,000 cases a year and devotes about one to three hours a week to this work. About five to seven percent of the cases are DUILs and there hasn't been a DUIL jury trial for almost two years. Also, he said, there hasn't been a jury acquittal since he could remember, which has been at least 14 years. A system such as the New York procedure, he said, is excellent for handling 450 cases in one day, but such a system would not be practical for Umatilla County. Judge Galbreath said that he was concerned with treating cases on an individual basis and that it was important for the public to leave a courtroom with a favorable impression of courts in general. He pointed out that most people are aware of what they have done when they have committed a traffic offense. However, if they should want to be heard, they should have the privilege. Most people he stated, if they have a contact with a court, it is either a municipal or district court, and the impression of courts in general is usually formulated by the experience gained in the municipal or district court.

Representative Paulus pointed out that the Legislature has been aware and concerned that most Oregonians, who have experiences with courts, have these experiences either in a municipal or district court. It has been important to the Legislature, she said, that these people have the best impression of the courts possible and for this reason the salaries of the district judges were raised in order to upgrade the quality of the district judges and courts.

Judge Thompson reported that there were 16,000 arrests in Salem for 1973, but all didn't go through the muncipal court. He had, he said 10,000 arraignments, 1,400 trials, 7,200 bail forfeitures, and he suspended over 200 drivers licenses for failure to appear. There were about 150 requests for jury trials with 25 being tried. There have been, he said, a few requests for jury trials involving traffic tickets. Because of these statistics, Judge Thompson said, he has had to double, and in some instances triple, the number of jury trial settings. If an individual

realizes that a trial to a jury will take place in three months and a trial to a court would take place in a matter of weeks, he will decide on a jury trial, especially on a DUIL charge because he would retain his license during that period. One reason for doubling the jury trial schedule, he said, is because less than 50 percent are tried. Judge Thompson stated that in scheduling a jury trial now it would be heard by the first of March. Considering the number of trials handled, Judge Thompson stated that he didn't believe that this was too great a delay. He said that he has had the schedule down to seven weeks in advance. However, this creates problems, because it is difficult for a lawyer to prepare for a court trial in seven weeks. Many defendants without counsel have difficulty preparing for a trial in seven weeks.

Judge Thompson informed the members that he is interested in individual and alternative treatment of offenders, whether they might be minor traffic offenders, juveniles with a first offense or DUILs. He indicated that during the last four months he has required and received approximately 200 themes varying in length from 300 to 500 words. These were required primarily of juvenile offenders with minor traffic offenses, some bicycle offenses and in some cases pedestrian offenses. He considers this an educational tool, he said, and that he reads every theme and makes a decision as to whether to dismiss the citation so that there is no moving offense on the record, dismiss the imposition of the fine and the offense will appear on the record, or he may impose a fine in addition to requiring the theme. Judge Thompson indicated that he feels that alternative methods are important, because young offenders, under a procedure such as the one in New York, may get the impression they can buy their way out by paying a fine on the first offense. He further stated that the appearance of a parent with a juvenile offender is required in his court. In answer to a question by Representative Cole, Judge Thompson answered that alternative methods are used in other municipal courts. All offenders do not have to appear, he said. Many simply forfeit bail. He stressed that juvenile offenders have to appear and no bail is posted.

Judge Yvonne Addington informed the subcommittee that Tualatin has a population of 3,000 people in an area of 10,000. During 1973, she said, 780 traffic citations were handled, 12 jury trials, 15 court trials and no appeals. There were, she said, 52 informal hearings and 104 dismissals. A copy of Tualatin statistics is attached as Exhibit C. The dismissal, she said, is her alternative method of handling juvenile offenders with a first offense. The offender has the choice of either paying the fine or working eight hours in the emergency ward of the community hospital. The offender then writes a letter or goes to see her personally, she said, and reports on what transpired in the emergency ward. She indicated that in this way the offender sees for himself what may happen when he speeds and that it makes a greater impression than anything she might say to him. The citation is then dismissed so the first-time offender has another chance to keep his record clear. There are statistics, she said, for a period of two years to show that those involved in this program do not have repeat offenses. Of 195 offenders only one has received a second citation.

Judge Giovanini reported that in Beaverton there exists a six-day minimum jail sentencing practice for DUILs. An offender in lieu of a six-day jail sentence may donate six days of labor to the Tualatin Hills Park & Recreation District, which operates the parks, swimming pools and play grounds in the district.

Judge Galbreath told of the alternate method of handling first-time offenders in Umatilla County. He said that every effort is made to not send an offender to jail for a first offense. Offenders are required to attend an Alcoholic Information School at the community college and are allowed to retain their licenses so they can drive to the school. Also, he said, confirmed alcoholics are not sent to the school. Alcoholics are urged to seek treatment at the State Hospital or some place that deals with their problem. He expressed the opinion that this system is effective in dealing with the drunk driver. Judge Galbreath further stated that in his opinion the jury system should be maintained for those who request to have their cases heard by a jury.

Representative Paulus agreed and made the statement that greater contact is needed between a judge and a person being sentenced and nothing should be done to minimize the contact that exists at the present time. An individual may be called a hearings officer, she said, but he would be performing the duties of a judge.

Many police officers, in the opinion of Judge Galbreath, feel strongly about cases in which they are involved and nothing should be done to give police officers reason to have stronger proprietory feelings about these cases. It should be realized that a judge may decide for a defendant and that this in no way reflects on the sincerety or integrity of a police officer.

Chairman Cole called for a 20 minute recess at 11:10.

Chairman Cole spoke to the Judges and reported that the Committee on Judiciary has two assignments. One is the study and possible revamping of the Oregon motor vehicle code and the other is the study of decriminalization of minor traffic offenses and perhaps the instigation of some form of administrative adjudication of traffic violations. He stated that the reason the New York system is being studied so thoroughly is because it is the only system of its kind in existence at the present time. Representative Cole asked the Judges specifically what they might think of the prospect of decriminalization of minor traffic offenses. He stated that this does not mean the cities would lose revenues, which are available through fines, and that the program would not necessarily remove the system from the courts, although this could be an eventual possibility. Representative Cole stated that he was interested in opinions as to whether traffic cases should continue to be handled through the courts as opposed to hearings offices. Although some of the judges had already spoken to this, he said that he was interested in more opinions. Another point on which he was interested in hearing opinions was whether, if there was a decriminalization, the courts in Oregon--justice of the peace, municipal and district--could handle the program.

Judge Curtis reported that he represents Springfield, a community of 30,000, and that his court tries cases four days a week. He stated that he is a part-time judge and works with another judge who tries cases two days a week. Reference was made by Judge Curtis to Exhibit A, which contains statistics as to the types of cases and number of trials handled by the Springfield Muncipal Court. Also, he said, that he had submitted material on the current court docket, which is also attached as part of Exhibit A. He stated that Springfield does have a docket problem. Most jury trials involve major traffic offenses. Although occasionally there is a jury trial for a minor offense, this rarely occurs. Springfield, he said has hired 10 additional officers the past year and a half, and the court personnel has remained the same. This has increased the number of citations issued and involves about 500 cases a month. It takes a minimum of four months to bring a case to trial and the docket for January, February and March is full and there are more cases waiting to be set than can be handled in April. It is the practice in his court, he said, to set two trials for the same time, and in February three cases will be set for the same time. Each case is allowed to have its own jury so that 12 people, two juries, need to be ready when two cases are set for the same time. In answer to a question, Judge Curtis stated that over a year ago a ruling was adopted that an appearance had to be made at the time designated to select a jury or the jury would be waived. This system, however, is not working at the present time and a problem exists. Although Springfield needs an alternative, he said that he is opposed to eliminating jury trials and doesn't believe that this would be an answer to the problems in his court. In answer to a question by Chairman Cole, Judge Curtis said that if all the minor traffic offenses were removed from the docket, a problem would still exist.

Judge Schwab indicated that in his opinion if a person is faced with a jail sentence, even for one day, he should be entitled to a jury trial. Federal requirements stipulate that a jury isn't required unless there is a possibility of a jail sentence of over six months. A jail sentence of under six months is considered a petty offense. He further stated that in Oregon the practice has been that if a defendant faces a jail sentence, no matter how long, he is entitled to a jury trial. This isn't the question, he said, because in most cases where there is no accident, no injury and no previous bad driving record, there is no real possibility of an individual going to jail. The question that needs to be answered is whether only a jury can make the decision as to whether a defendant will lose his drivers license. The real issue is not whether you should have a jury to send a man to jail, but whether you shall have a jury before you take away a drivers license or impose any other form of civil as distinguished from criminal penalty, he said.

Judge Curtis stated that a serious question exists whether muncipal courts have the power to enforce the payment of fines. The assumption exists that the courts do have this power. However, he said, that he would hesitate to charge someone with contempt for failing to pay a ten dollar fine. When the question arises, the opinion, he said, seems to be that this should be handled through a civil process. It was the opinion of Judge Curtis that civil process simply isn't practical because the city attorneys don't have the time to handle it, and the result is a long list of unpaid fines. He stated that he does use jail

sentences for minor traffic offenses and will suspend the sentence with the condition the fine be paid within a certain time. He said that in this way he believed himself to be on safer ground than to enforce the payment of the fine on a contempt procedure. The judges in the Lane County Court decided that this approach was not in violation of the Supreme Court decision that a defendant couldn't be jailed for the nonpayment of a fine.

Judge Schwab asked if it wouldn't be simpler for a judge to have statutory powers to issue contempt orders. The judges were in agreement with Judge Schwab and indicated that this was a proposal they had wanted to submit to the subcommittee.

Judge Galbreath stressed that the judges don't wish to give the impression that they are concerned that cities will lose revenue. The primary concern of the judges, he said, is traffic safety.

In answer to a question by Chairman Cole, Judge Galbreath replied that very few of the minor violations filed in his court are forfeited. In reply to another question by Chairman Cole as to how they felt about a criminal charge with a potential jail sentence for any minor traffic violation, Judge Curtis asked whether by decriminalization it was meant that there would also be a change in the "burden of proof beyond reasonable doubt" now to "preponderance of the evidence" then. Representative Cole replied that probably this would follow, and Judge Thompson stated that on that basis he would be totally against decriminalization.

The Legislature in the past, Chairman Cole reported, had decided that a violation of vehicle equipment requirement should be a crime. He asked Judge Thompson how he would feel about the matter if the Legislature should come to the decision that this type of offense would not be a crime but a civil penalty. Judge Thompson answered that if it were made a civil penalty and proof beyond reasonable doubt still required he could accept it. Judge Thompson continued that he believed that if the circumstance that a license can be taken from an individual as a sanction, even on a minor offense charge, with the circumstances that exist in Oregon with no mass transit and the possibility of not being able to continue on a job, the "burden of proof beyond reasonable doubt" should definitely be retained.

In answer to a question by Judge Curtis, Chairman Cole answered that one of the reasons for exploring the possibility of decriminalization of minor traffic offenses is due to the many reports on backlogs and crowded dockets due to minor traffic offenses.

Mr. Paillette stated that the Judiciary Committee is dealing with court procedures, and the reports that the legislature had received were that some of the district courts had real problems with their dockets. The committee was given the assignment to determine whether

this is the case and to investigate the possibility whether some change in the way the penalty structure is written with respect to the motor vehicle code or with respect to court procedures, or possibly some other type of adjudication system, might be a possible solution to alleviating the docket problems. There is no way this committee can examine the procedures and attempt to find solutions for the district courts and ignore the municipal courts.

Judge Curtis stated that a way to solve the problem in his court would not be to decriminalize certain crimes but to give further consideration to eliminating the right to a jury trial for crimes with certain types of penalties. This could be done without changing the burden of proof, the system, court procedure or the right to appeal, he said. This could pertain to minor cases without decriminalization.

Judge Schwab made the comment that the number of cases handled by a court is not too much of criteria, but the time required to handle the cases is of importance. DUILs and serious cases take most of the time.

Mr. Paillette assured the judges that the subcommittee had not decided to simply adopt the New York system. The subcommittee has been studying it because it is the only administrative system in effect at the present time. He added that California, as of January, decriminalized many of its minor offenses. However, the system is still operated through the courts.

It was his belief, stated Judge Galbreath, that a real problem with court dockets was not a factor in the district courts, Portland being an exception. He further stated that in his opinion the district judges would not be involved in anything 60 percent of the time. Chairman Cole added that a great number of jury trials are requested and when on the day of the trial a large number cancel the request for a jury, a problem does exist. Judge Galbreath stated that this is an administrative problem that could be worked out. Chairman Cole reported that the Salem District Court had informed the subcommittee of docket problems.

Judge Schwab told the subcommittee that he has had experience with setting cases for trial and with attorneys coming in the morning of a trial and settling out of court. It is his opinion, he said, that the present system is tremendously inefficient. The juries are ready and being paid, and it is a waste of time for the judges.

Senator Eivers asked what would be considered wrong with the system if the defendant pleaded guilty and settled out of court. It was his opinion, he said, that the present system isn't the time consuming problem it is being made out to be. Judge Schwab added that it is simply a waste of time and an inefficient way to handle the procedure. As an example, said Judge Schwab, Medford last June had cases set through October. If Medford, Springfield, Eugene and Portland are taken into consideration, well over half the cases in the state are involved. An alternative would be, Judge Schwab continued, that any

cases involving municipal ordinances could be left unchanged if the cities involved would be satisfied.

Judge Giovanini stated that the only contact that most people have with a court is usually a lower court and the impressions of all court systems are derived from those experiences. He stressed that each case should be handled on an individual and personal basis and that a jury trial should be made available even for a parking ticket. If six or seven municipal courts are having problems, he said, he wouldn't be in favor of changing the whole system. It was his opinion that most municipal judges would rather not depend on information from Salem and that they don't rely on the "driving while suspended" information from MVD. Chairman Cole questioned the statement that "most" municipal judges don't believe the information dispensed by the MVD. Judge Thompson stated that he wouldn't say that he doesn't believe information that comes out of the MVD and that he relies on it substantially. However, he said, there are many errors and the services of the MVD could and should be upgraded by correcting what it does presently and making the information more accurate. Judge Thompson continued that MVD never indicates on a motor vehicle driving record when an individual was sent notice of suspension, and when notice of suspension is returned undelivered this is never noted and then it is noted that the driver was suspended. The day of a trial the city attorney comes into court to prosecute the case and brings into the courtroom the notice of suspension marked "undelivered". Judge Schwab added that people fail to notify MVD of address changes and that notification of suspensions are mailed to last known addresses. Mailing to the last known address, he said, is prima facie evidence of notice, and if the notice isn't received, it is the fault of the person in violation.

In answer to a question by Chairman Cole, Judge Giovanini reported that if an individual is suspended because of a DUIL charge--arrested, tried, convicted and suspended--the computer information from MVD isn't needed to substantiate the fact that he shouldn't be driving.

Judge Galbreath stated that a person picked up while driving without insurance is treated no differently than a multiple offender. He cited an example of a 19 year old boy who had been charged with 26 moving violations in three years and had never seen the inside of a jail. After being sentenced and serving 90 days in jail, he has not been cited for an offense in five years. Driving with a suspended license is a much more serious offense, he said, than drunk driving. Judge Galbreath added that he hasn't used a confiscation of vehicle procedure because he doesn't consider it effective. Most vehicles driven under a suspended license usually belong to someone else or they are ready for the junk heap.

Judge Giovanini informed the subcommittee that a docket problem does not exist in Beaverton. The court, he said, averages one jury trial a month and there are six appeals pending in Beaverton Municipal Court. Two persons out of 12 are acquitted. Plea bargaining runs fairly high on DUILs, he said, as indicated on Exhibit B. Plea bargaining related only to first time offenders and no license suspensions were involved.

Judge Galbreath indicated that in his court plea bargaining is almost nonexistent. There has been a practice in operation for 13 years that a person with less than a .12 percent with no major moving violation on record, DUIL charge, no property damage involved, the city attorney could then move to reduce the charge. The fine has remained the same with the possibility of a jail sentence being imposed.

Judge Yvonne Addington expressed the belief that periodic drivers examinations would be helpful in curtailing traffic offenses. In answer to a question by Chairman Cole, she indicated that an individual should be mentally and physically capable of driving and should have some knowledge of the contents of a drivers manual. She stated that driving is a privilege and that if a driver cannot meet the qualifications, he shouldn't be allowed to drive. Judge Schwab pointed out that this is an example that for good cause a license could be taken away administratively. Judge Addington also stated that it would be helpful to have statewide warrants for individuals who fail to appear for arraignment. Tualatin, she said, cites DUILs and other major offenses into the district court, because her court doesn't have the time to handle any jury trials.

Judge Schwab informed the subcommittee that a constitutional problem may exist in that if a case is cited into municipal court it cannot be appealed beyond the circuit court. If it is cited into a district court, he said, it then becomes a state charge and can then be appealed to the Oregon Supreme Court. An officer can conceivably make a mistake and mark the wrong court on a citation

Chairman Cole asked for anyone interested to submit a written statement and to return at 1:30.

The meeting was recessed at 12:15 for lunch.

1:40 p.m. -- Public Hearing

Representative Paulus was interested in how drunk driving and suspended license cases are handled in Beaverton, and Judge Giovanini answered that repeaters are handled rather severely. Occasionally there are extenuating circumstances when a first time offender believes he has complied with all requirements and has perhaps failed to take care of one requirement such as sending in a renewal fee. This type of offender isn't treated too severely. He told of a man who had been arrested four times on DUIL charges and driving while suspended seven times. He had served some time in jail and had a substantial fine to pay. For various reasons, he said, the driver's car could not be confiscated. Chairman Cole asked Judge Giovanini if he believed a more severe confiscation law would be more effective and whether it could be utilized for serious cases. He answered it could be utilized but that it wouldn't need to be more severe.

Dealing with drunk drivers, Representative Paulus reported, was a problem the Legislature last session tried to find ways to handle.

Although, she said, she didn't necessarily believe in mandatory jail sentences, she did feel that extraordinary measures were needed to deal with drunk drivers because of the tremendous problem that existed in Oregon. The question that exists at this time is, she added, how to keep the driver with the suspended license from driving and one way to accomplish this is to take his wheels away from him. If a car is needed for employment or if a family needs a car, it is rarely confiscated. Exceptions are made. She stated that if the family of a suspended driver suffers or a friend who might loan his car to the suspended driver loses the use of his vehicle, then the driver might think twice about driving.

Judge Galbreath remarked that a way to approach the problem of the driver with a suspended license would be to educate him. There is a statute requiring all traffic court judges to attend a Traffic Court Conference each year. However, he said, funds are not available for all municipal judges and justices of the peace to attend. He reported that Loren Hicks, Court Administrator, is organizing a school for judges, which will be conducted on one of the campuses. In answer to a question by Chairman Cole, Judge Galbreath agreed that judges are not aware of sentencing alternatives that are available other than fine or jail. He stated that although fines and jail sentences are a deterrent, they don't resolve the problem. It has been his practice, he said, to suspend imposition of a sentence while the driver straightens matters out with MVD. The MVD, he stated, deals fairly with individuals who need occupational licenses. Judge Galbreath stressed that it is important to make courts aware of their judicial functions and that the basic concern should be traffic safety and not collecting revenues.

Senator Hoyt expressed his concern that many people will repeat a violation many times and that he believed extreme measures should be taken to keep these drivers from operating a motor vehicle.

In answer to Judge Galbreath's remark that he resented being told that he had to impose mandatory jail sentences, Representative Paulus replied that the Legislature took this action because everything else seemed to have been tried without any results.

Judge Giovanini stated that in Eastern Oregon, for example, distances are so great that a person can't survive without driving. In many instances it isn't possible to get to work without driving. He cited an example of a man who had just gotten out of jail for driving with a suspended license and announced that he was going to continue to drive. Senator Hoyt added that anyone who knowingly loans his car to a suspended driver deserves to have that car confiscated. Whether that driver can get to work or not, said Senator Hoyt, isn't important. What is important is whether or not he kills someone, and most accidents are caused by repeat offenders and many have suspended licenses.

Ms. Vinita Howard, Public Information Officer, Motor Vehicles Division, said that there is another alternative for driving while suspended and that is suspension of registration of the person who is convicted. The Motor Vehicles Division has had 88 court recommended

registration suspensions for driving while suspended. In answer to a question by Senator Eivers, Ms. Howard said that it is much easier for law enforcement officers to stop a driver if his license plates are missing.

Representative Paulus asked what the penalty was for switching license plates. Ms. Howard answered that it is covered in O.R.S. 481.255 and that the fine is not more than $400 or imprisonment in the county jail of not more than a year or both.

Ms. Howard read a prepared statement, which is attached as Exhibit D.

In answer to a question by Rep. Paulus, Ms. Howard replied that SB 730 provides a convicted driver with a temporary permit to enable him to drive from the courtroom to home.

Enactment of SB 637, stated Ms. Howard, has been a step in the wrong direction and experience the past three months tends to confirm this opinion.

Ms. Howard stated, in answer to a question by Chairman Cole, there have been 2,208 people the first 11 months this year charged on a second conviction, 925 on a third or subsequent number and 8,914 on a first conviction.

Attorney General Lee Johnson submitted a letter to Chairman Cole and copies of a statement to the members of the subcommittee. A copy of the letter is attached as Exhibit E and a copy of the statement as Exhibit F. Mr. Johnson stated that copies of the letter had been forwarded to the Speaker of the House, President of the Senate and Governor. It involved, he said, the Federal Emergency Highway Conservation Act. It is imperative, he continued, that the special session of the Legislature enact legislation providing for a maximum speed limit. The Federal Act provides that states must, within 60 days of the date of enactment, which is January 6, have a maximum speed limit of 55 miles per hour or lose federal funds.

In answer to a question by Chairman Cole, Mr. Johnson stated that the State Transportation Commission and State Speed Control Board have the authority to lower the designated speeds but cannot set maximum speeds. Mr. Johnson indicated that they are applying to the Federal Highway Administration for an opinion as to whether Oregon is in compliance with the measures that have been taken. Chairman Cole asked whether proposed legislation would include an automatic repeal clause in the event it isn't needed. Mr. Johnson answered that in his opinion the easiest way to handle this would be by giving authority to the Board to set the maximums and leave it as an administrative determination to be made by the Board. In this way, he added, existing framework would be used. Legislation to require the State Speed Control Board to determine a speed on a highway going through a muncipal district is also being suggested. Chairman Cole

asked about secondary highways such as Highway 101 through Seaside and who would determine the speed. Mr. Johnson indicated that he believed the restriction should be limited to the freeways.

Senator Hoyt expressed the concern that Mr. Johnson advocated the decriminalization of DUIL and suspension cases when he, in fact, considered them extremely serious. Mr. Johnson answered that he wasn't suggesting an administrative procedure over suspension but possibly a civil contempt type proceeding. There may be some advantages, he said, to be gained with this type of procedure and the guilty party can still be sentenced to a jail term. The suspension statute is different than that dealing with someone who pleads an action, such as a hit and run, and is designed, he said, to enforce what the administrative agency, in effect, has done to take away a license.

Chairman Cole stated that Senator Hoyt was concerned that higher and increasing penalties were not the answer and Attorney General Johnson had been speaking on approaching the administration of handling cases differently than just through the criminal courts. Mr. Johnson added that suspensions will have to be handled through the courts one way or another. He added that it might be referred to as civil contempt and would in no way restrict a court from imposing a jail sentence. In answer to a question, Mr. Johnson answered that it is possible to receive a jail sentence for civil contempt. He continued that one of the big problems in regard to suspensions is notice and it would be extremely helpful if this problem could be worked out. Mr. Johnson added that DUILs are jamming the system and the laws dealing with DUILs are not being enforced uniformly. He continued that a fine can be imposed administratively and a license can be suspended administratively, but a man cannot be jailed administratively. Senator Hoyt asked if a man would have the same defenses under an administrative procedure as he does under a criminal procedure and Mr. Johnson answered that there is no defense against a blood alcohol of .15 if a person is arrested.

Mr. Johnson's suggestion was to lower the blood alcohol reading to .10, make it an administrative offense and make the first offense a light penalty. This would be the way to enforce the law, because it isn't being enforced today. This would be a procedure, he said, that could be handled much more efficiently, uniformly and would be cheaper.

Mr. Robert Brasch stated that he was the District Attorney for Coos County and president of the Oregon District Attorneys Association and that he was appearing as the president of the Association. He remarked that the concepts presented by Attorney General Johnson are new and that perhaps not too many people outside the legal profession would be familiar with them. He said that he had discussed the concepts with trial judges and Judge Schwab, with prosecutors and members of the ODAA. The prosecutors and members of the District Attorneys Association agree with the concepts, he said, almost in total as presented by the Attorney General. In answer to a question by Chairman Cole, he said that as to DUILs the District Attorneys Association has not taken a formal position on that particular crime. It was his own opinion that the purpose of putting someone in jail was supposedly a deterrent and he would question whether society could deter people from driving under the influence of intoxicating liquor unless the penalty, as it is in

some parts of Europe, is so severe that people simply won't take the chance. Mr. Brasch stated that people don't go out for an evening with the intention of drinking too much and then driving home. This sort of conduct simply evolves. The criminal penalty, he said, in order to prevent someone from going to a party and drinking too much and then driving home would have to be extremely severe.

Mr. Brasch stated that he has been a prosecutor for seven and one-half years with three lawyers working with him who handle criminal cases and two who handle civil cases. He stated that it was his feeling that the same objective could be accomplished through an administrative hearings process, with a right to appeal to the courts for those who feel they have an unusual situation. He indicated that most cited persons plead "not guilty".

The District Attorneys Association has taken a position against an absolute speed limit since its members do not have difficulty prosecuting under the basic rule.

In answer to a question by Mr. Paillette, Mr. Brasch answered that he couldn't understand why a suspended driver needs to be notified by MVD that he is suspended. He simply can receive formal notification in the courtroom. He also stated that he would be in favor of supporting the American Medical Association in that a person is under the influence at .10.

Mr. Dan Goff, Lane County District Attorney's Office, stated that in decriminalizing and making DUILs not a major offense he was concerned that the conviction and prosecution rate wouldn't be so high. Defense has made this such a technical matter with respect to convictions that he doubted, without representation from the state, whether prosecution would be very successful. Mr. Goff stated that probably 80 percent of the driving while suspended cases are dismissed in his court because they are impossible to prove under the requirements of the legislation that now exists because of the notification requirements. In answer to a question by Representative Paulus, Mr. Goff answered that the sheriff in Lane County is so overworked that it is difficult to get service on felony cases. The suggestion was made by Mr. Goff that the drunk driver could be charged with attempted assault or recklessly endangering and charged with a felony and the case handled in that way. This could especially be done in aggravated cases. Mr. Goff stated that they set seven or eight jury cases a day and about 60 percent are DUIL and VBR cases. The convictions are 90 percent of those tried.

Mr. Goff reported that there is no disagreement from the offices of the prosecutors and district court judges in Lane County that minor traffic matters should not be decriminalized. One of the judges, he said, indicated that before something new is created provisions that already exist should be explored. For example, a "Violations Bureau" could be created in the court. Chairman Cole added that such a bureau would not have authority to hear contested cases and would need to be expanded. Whatever changes are made, the

feeling exists in Lane County that persons involved should be responsible to the District Court and that any hearings officers should be lawyers. A suggestion made by Mr. Goff was that some effort could be made to cite persons who don't notify MVD of change of address.

Senator Hoyt and Senator Eivers both stressed the concern that communications between the D.As., the courts and MVD are not adequate. That individuals and groups involved in defense and prosecution do not give enough input to the legislature and do not discuss problems with each other.

Judge Thomas Hanson informed the group that Multnomah County and Lane County operate under different court rules than the rest of the state. Those two counties can request a 30 day notice for the setting of a jury trial. This stipulation, he said, cannot be made in other counties. Marion County District Court, for example, may set several cases on the docket for a particular morning and then five days before the cases are to be heard the request may be made for a jury trial for one of the cases. The cost is prohibitive in Marion County. He cited the example of seven cases being set for jury trial which involved three judges and 24 jurors with only one jury being used. Some kind of system where notification for a jury trial would have to be made before a specified time and a deposit required for the setting of a jury trial would be helpful in alleviating some of the docket problems that exist at this time said Judge Hanson. Judge Hanson said that he supported a maximum speed and believed it would be easier to enforce than the basic rule. Continuances are necessary, under certain circumstances, and should be allowed, he said, but they should be within a day or two or a week at the most. Representative Paulus suggested that perhaps a report could be made by judges on lawyers involved with unnecessary delays.

Judge Philip Abrahams reported that he has been a judge for 10 years and that four of those years have been fulltime in traffic court. He stated that he would be speaking in relation to the Multnomah County District Court as a metropolitan court with a volume operation. In his opinion the administration of justice has improved in Multnomah County but that the traffic court has deteriorated in dealing with traffic offenders. It is now necessary for a person who pleads "not guilty" to make a second appearance for the case to be set for trial. Although a mandatory court appearance was required on three violations a few years ago, the volume is so heavy in the court now that a mandatory appearance is required after four violations within a year. A mandatory court appearance used to be required for 15 miles above the basic rule and that was changed to 20 miles because of the crowded dockets. In his opinion, Judge Abrahams stated, Multnomah County already has an administrative adjudication system for about half of the traffic cases.

Multnomah County isn't using much more judicial manpower than was used seven or eight years ago, but the caseload is heavier and the

requirements imposed on the court are more strict. It was his opinion that decriminalizing minor traffic offenses and removing them from the criminal justice system is probably warranted. In his opinion, he wasn't certain whether major offenses should also be decriminalized. Judge Abrahams reported that very few people ask for juries in connection with minor traffic offenses and that 85 percent of the people plead guilty. An administrative procedure in Multnomah County would probably free two judges out of 12 for other duties.

Representative Paulus made the suggestion that possibly minor offenses should be reviewed and a determination be made as to whether they are justified and whether they relate to traffic safety. Judge Abrahams replied that traffic safety should be the only justification for a minor offense but that revenue is also used as a justification The district court in Portland received $1,000,000 in revenue last year. The aim of a traffic law, said Judge Abrahams, should be to facilitate the flow of traffic in a safe manner. Representative Paulus and Judge Abrahams were in agreement that DUIL is a very serious offense and should be maintained in the criminal justice system, at least at the present time under present circumstances.

Judge Abrahams, in response to a question by Chairman Cole, pointed out that he measures his success in the number of safe drivers returned to the highways. He is involved in a program to which problem drinkers are sent, even under the threat of a jail sentence, for treatment. At this time, there are 1,000 people in treatment, and this, he said, he considers a success. Although statistics won't be available for five years, it is safe to assume, if these individuals are making progress, that it is less likely that these people will be back than would have been without treatment. Judge Abrahams stated that there are guidelines for reducing charges, and a reduced charge is used to get a drunk driver into treatment. A substantial number of first-time offenders are being directed to the treatment program, said Judge Abrahams, and this could be handled administratively.

Judge Abrahams pointed out that two thirds of all municipal judges are not lawyers and they hear traffic cases where the possibility of a jail sentence exists. Under these circumstances, he said, he didn't believe it would be necessary to require a lawyer for a system that would remove jail penalties.

The Consulting Committee, reported Judge Abrahams, took the position to recommend to the Subcommittee on Adjudication the decriminalization of nonmoving violations.

Chairman Cole informed the group that one of the reasons for the study this interim by the Judiciary Committee was the request by several district courts for additional positions for judges, which was supported by statistics and members of the Bar. The Ways and Means Committee suggested a study to determine if changes could be made in caseloads or changes in procedures to improve efficiency without

adding more judges. Also, he said, perhaps some day it would be possible to increase the civil capacity of the district court, convert it to a one court system and make it a court of record. This would increase the responsibilities of the district court. Traffic cases, said Chairman Cole, could be handled elsewhere, which would leave the district court more time for other offenses. He asked for future comments and opinions on this subject and as to how far the subcommittee should go in making changes and still have adequate representation in court for those who want it.

Mr. Gil Bellamy expressed the opinion that confiscating the plates of an automobile driven by a person with a suspended license would be an effective way to keep the driver from behind a wheel or keep other persons from loaning an auto to a suspended driver. Judge Abrahams added that to confiscate a car belonging to a second party being driven by someone with a suspended license requires too much investigating and the county simply isn't willing to spend the money. Also, the law doesn't say that a car belonging to another party can be confiscated. Only if the person knew, he added, that the suspended driver was driving his car could this be done and that would require a hearing. Confiscation of automobiles had been tried in Multnomah County, but there were too many questions that needed to be answered such as whether the sheriff should pick up the car or should the car be delivered by the driver, and if the driver was suspended, how could this be done. Judge Abrahams stated that the alternative of suspending a registration is good, because all that needs to be done is notify MVD.

Mr. Bellamy informed the subcommittee that because of the Oregon Supreme Court decision stating that anytime the possibility of a jail sentence exists, a defendant is entitled to an attorney, the Traffic Safety Commission supports a closer look at alternatives to the present system. He stated further that the present court system must have significant changes or a new system such as administrative adjudication should be enacted to handle minor offenses. Mr. Bellamy cited an example which substantiated opinions, he said, expressed earlier regarding the waste involved in setting jury trials and then having them set over the last minute. Mr. Bellamy suggested that an administrative system could be enacted in stages and perhaps encompass only the nonmoving violations at first; later other violations could be included. It was his opinion that the laws relating to driving while suspended are not adequately enforced since the suspended driver can drive and will not be stopped unless he commits an offense. Almost everyone involved in a fatal accident has some kind of driving record, he said. Mr. Bellamy defined his job as preventing the incident of the DUIL of occuring before it goes to court. Portland has a drunk driver squad, and when it was first enacted, it was extremely busy. However, he stated, it now is necessary to search for DUILs. He would support the interpretation that anyone who fails to notify MVD of change of address as waiving formal notification of suspension.

The Fatal Accident Reduction Through Enforcement (FAIR) program is in operation in areas of four counties, said Mr. Bellamy, and the

reduction of fatalities in these areas exceeded 50 percent. The additional arrests created a problem with the courts. The Traffic Safety Commission, he said, has found ways to retrain policemen and has a manual on collective enforcement and can increase arrests for DUILs by around 200 percent in almost any area. It is necessary, he said, to increase the capacity of the courts to handle the increase in arrests.

Holly Holcomb, Superintendent, Oregon State Police, remarked that he agreed that an administrative adjudication system for minor traffic offenses would be a benefit to the people of the State of Oregon as well as to the Oregon State Police Department. He stated that the State Police believe that it is necessary to devise some system that can handle the increased number of arrests.

The meeting was adjourned at 4:55 p.m.

Respectfully submitted,

Anna McNeil, Clerk

EXHIBIT A, Page 1
Committee on Judiciary
Subcommittee on Adjudication
January 9, 1974

CITY OF SPRINGFIELD

MUNICIPAL COURT

Monthly Report - ~~June, 1973~~ December

Cases Processed:

Traffic:

20 DUIIL
1 Reckless Driving
4 Hit & Run
38 Eluding
1 Speed Contest
12 VBR
182 Other Moving Violations
6 Excessive Noise
128 License Violations

Total Traffic 503

Non-Traffic:

0 Drunk
4 Assault and Battery
3 Disorderly Conduct
11 Minor In Possession/Liquor
98 Dog Violations
12 Other

Total Non-Traffic 128

Total Cases Processed by Court: 631

Trials with Attorneys 47 32
Trials without Attorneys 43 45

Total Fines and Bail Forfeits: 1,675.00

mailed from Finance

CITY OF SPRINGFIELD

MUNICIPAL COURT

Monthly Report - ~~June, 1973~~ November

Cases Processed:

Traffic:

6 DUIIL
2 Reckless Driving
1 Hit & Run
1 Eluding
21 Driving While Suspended
10 Speed Contest
89 VBR
113 Other Moving Violations
4 Excessive Noise
78 License Violations

Total Traffic 315

Non-Traffic:

0 Drunk
13 Assault and Battery
6 Disorderly Conduct
8 Minor In Possession/Liquor
44 Dog Violations
6 Other

Total Non-Traffic 77

Total Cases Processed by Court: 392

Trials with Attorneys 44 ~~37~~ 31
Trials without Attorneys 64 ~~45~~

Total Fines and Bail Forfeits: 6,246.00

CITY OF SPRINGFIELD

MUNICIPAL COURT

Monthly Report - ~~June, 1973~~ October

Cases Processed:

Traffic:

12 DUIIL
3 Reckless Driving
0 Hit & Run
1 Eluding
16 Driving While Suspended
2 Speed Contest
60 VBR
184 Other Moving Violations
6 Excessive Noise
81 License Violations

Total Traffic 295

Non-Traffic:

2 Drunk
6 Assault and Battery
7 Disorderly Conduct
5 Minor In Possession/Liquor
62 Dog Violations
4 Other

86

Total Non-Traffic

Total Cases Processed by Court: 381

Trials with Attorneys 54 32
Trials without Attorneys 46 ~~45~~

Total Fines and Bail Forfeits: 10,266.00

CITY OF SPRINGFIELD

MUNICIPAL COURT

Monthly Report - June, 1973 September

Cases Processed:

Traffic:

20 DUIIL
6 Reckless Driving
1 Hit & Run
1 Eluding
12 Driving While Suspended
Speed Contest
45 VBR
136 Other Moving Violations
19 Excessive Noise
97 License Violations

Total Traffic 337

Non-Traffic:

1 Drunk
3 Assault and Battery
5 Disorderly Conduct
1 Minor In Possession/Liquor
86 Dog Violations
10 Other

Total Non-Traffic 106

Total Cases Processed by Court: 1143

Trials with Attorneys 45 32
Trials without Attorneys 44 45

Total Fines and Bail Forfeits: $5,987.00

CITY OF SPRINGFIELD

MUNICIPAL COURT

Monthly Report - ~~June, 1978~~ August

Cases Processed:

Traffic:

13 DUIIL
6 Reckless Driving
1 Hit & Run
0 Eluding
26 Driving While Suspended
4 Speed Contest
57 VBR
104 Other Moving Violations
13 Excessive Noise
90 License Violations

Total Traffic 301

Non-Traffic:

2 Drunk
3 Assault and Battery
3 Disorderly Conduct
10 Minor In Possession/Liquor
66 Dog Violations
16 Other

100

Total Non-Traffic

Total Cases Processed by Court: 401

Trials with Attorneys 31
Trials without Attorneys 47

Total Fines and Bail Forfeits: 10,619.92

CITY OF SPRINGFIELD

MUNICIPAL COURT

Monthly Report - June, 1973

July

Cases Processed:

Traffic:

15
~~20~~ DUIIL
0 Reckless Driving
1 Hit & Run
1 Eluding
18 Driving While Suspended
2 Speed Contest
41 VBR
34 Other Moving Violations
2 Excessive Noise
19 License Violations

Total Traffic 304

Non-Traffic:

3 Drunk
3 Assault and Battery
2 Disorderly Conduct
1 Minor In Possession/Liquor
91 Dog Violations
18 Other

Total Non-Traffic 120

Total Cases Processed by Court: 424

Trials with Attorneys 5
Trials without Attorneys 37

Total Fines and Bail Forfeits: July - 6,073.00

Pages 7-12 of this exhibit were not scanned.

Contact the Oregon State Archives for further information.

CITY OF BEAVERTON

4950 S. W. HALL BLVD. BEAVERTON, OREGON 97005

TELEPHONE 644-2191

TRAFFIC COURT STATISTICS, JAN - DEC, 1973

22000

COURT CASES

Monday Court Appearances (Arraignments)	1192
Friday Court Trials	354
Friday Jury Trials	11
TOTAL NUMBER OF TRIALS HEARD THROUGH DECEMBER, 1973	1557

APPEALS

Appeals pending	6
Appeals remanded	7
TOTAL APPEALS	13

DUIL CASES

Arrests	198
Convictions	161
Reductions	31
Dismissals	2
Not Guilty	2

FINES

TOTAL FINES THROUGH DECEMBER, 1973 $79,647.15

CITY OF TUALATIN

IN THE HEART OF THE BEAUTIFUL
TUALATIN VALLEY
OREGON
97062

Tualatin Patrol
Police Services
1973

Population - 3,000
Area Population - 10,000

2 INTERSTATE HWYS
(I-5 AND I-205)

Number of Reported Crimes:

Animals at Large	42	Burglary (force)	23
Theft (under $50)	31	Burglary (no force)	16
Theft (over $50)	24	Vandalism	18
Juveniles-Runaway	22	Drugs	13
Auto Theft	10		

Five or less reported crimes each:

Assault armed robbery, sex crimes, harrassment, mental commitments, homicide, attempted homicide, attempted suicide, arson, child death, kidnapping and injury accident.

All Miscellaneous services:

Includes area checks, non-injury accidents, illegal hunting, family disputes, vacation checks, noise complaints and unfounded complaints.

Traffic Citations:

Traffic Citations (does not include DUIL and DWS cited in District Court but only DWS, reckless, eluding cited into Tualatin Municipal Court

Violations of Basic Rule	~~29~~ 46 546
Obey stop signs and other violations	188
	780

Court Appearances:

Jury trials, court trials, informal hearings and bailiff activities of municipal court - approximately 12 hours

JURY TRIALS 12

APPEALS 0 (4 years)

COURT TRIALS 15

TRIAL: INFORMAL HEARINGS 52

DISMISSALS (AFTER 104

PLEA- JUVENILES

RECEIVE FIRST CITATIONS IN TUALATIN DO 8 HOURS HOSPITAL DUTY - TICKET IS THEN DISMISSED

Statement
Motor Vehicles Division
Subcommittee on Adjudication
Interim Judiciary Committee
January 9, 1974

The Motor Vehicles Division welcomes the Interim Judiciary Committee's decision to examine the administrative adjudication system for traffic offenses. We believe the time has come to seriously consider some new method of processing traffic violations, and administrative adjudication appears to be the best solution to this growing problem in Oregon and elsewhere.

Should this Interim committee and the Legislature see fit to adopt administrative adjudication and to place the responsibility for conducting the program within the Motor Vehicles Division, as it is in New York state, we assure you that the Division will do its best to develop a program that will do credit to the State of Oregon.

Should the committee decide to place the adjudication system in the courts, or some other responsible state or local agency, we also stand ready to cooperate to the fullest to make the program a success.

In 1973, 421,822 abstracts of court convictions for all types of traffic law violations were received by the Motor Vehicles Division. This figure represents about a 14 per cent increase over 1972.

Based on our analysis of convictions for 1971 and 1972, it appears that only about 5.7 per cent of the total are for the major traffic offenses defined by Oregon law--reckless driving, driving while under the influence of alcohol or drugs, driving while suspended, eluding a police officer, and hit and run. Driving under the influence, driving while suspended and reckless driving account for most of the major traffic convictions (97.39% of the total major offense convictions).

1972 Major Traffic Offense Convictions

Reckless driving.....	2,991
DUIL/.15 or more.....	11,255
Dr. Inf. Drugs	28
Driving while Susp.....	5,887
Eluding Police.....	393
Hit & Run.....	117

If our statistics are valid 94 per cent or the total traffic convictions last year (about 397,000) were for violations of the rules of the road, equipment, registration and other driver licensing violations. (DMV does not now receive convictions for parking, size and weight violations.)

The Motor Vehicles Division believes administrative adjudication offers several advantages:

1. It frees the judge from processing relatively minor offenses which often occur as a result of driver carelessness, inattention, distraction, absentmindedness, or lack of understanding, and thus permits the court to concentrate its attention to the proper handling of the major offenses, all of which have at least some element or degree of deliberate intent on the part of the offender. (Our use of the term "minor" in no way is intended to downgrade the role of rules of the road violations in the total highway safety picture.)

2. Administrative adjudication appears to offer the possibility of conducting the program on a less costly basis, in the long run, than is possible if all traffic violations continue to be processed as criminal actions in the future.

3. Moreover, such a system appears to speed up the processing of offenses from the time the citation is issued until the time an entry is made to the driver's file, while still protecting the citizen's rights.

4. Properly administered, and perhaps coupled with a graduated re-education program, we believe it also offers a real potential for highway safety in that it relates traffic offenses more promptly and directly to the license to drive, offers a more uniform administration of penalties and, in some respects, may also help overcome the long-held and not entirely erroneous public conviction that traffic violations are as much related to the need for city or county or state revenue as they are to highway safety.

The problems which the Motor Vehicles Division experiences with present court procedures and the problems the courts experience with the Division, relate almost exclusively to the major offenses. These are the offenses that result in mandatory license suspension, driving while suspended, and occupational licenses for first offense DUIL cases. They are the offenses which, under the administrative adjudication system would, in all likelihood, remain in the hands of the courts. The major exception to this statement are the drivers charged with driving while suspended when the suspensions result from a financial responsibility (insurance) problem. Many courts seem to place little importance on this suspension.

Thus, with or without administrative adjudication, some of these problems appear to need legislative action and a continuing effort to improve communications between the courts and the licensing agency.

COURT--DMV COMMUNICATION

In recent years, the Motor Vehicles Division has increased its effort to communicate with the courts. Our personnel have visited courts and district attorneys to discuss mutual problems; we attend traffic court conferences; we publish a quarterly traffic court newsletter; and we have provided courts with a book of codes to help them interpret driving records. We now have at the printer a "Forms Manual" illustrating forms courts should use in communicating with the Motor Vehicles Division and how these forms should be completed to avoid problems.

But despite these communication efforts, problems exist and will undoubtedly continue to exist without some legislative action.

CONVICTIONS RESULTING IN MANDATORY SUSPENSION

Oregon law has for many years required courts to pick up and return to the Motor Vehicles Division the license when the court finds a driver guilty of an offense that results in mandatory suspension, or when the court recommends suspension for any other offense. (482.470 (3)

In the past, many courts failed to comply with this law because to do so often meant that the driver was unable to get from court to his home legally, or had to have some one else drive him and his car home.

In 1973, the Legislature enacted SB 730 (Chapter 480). This measure gives authority to the court to issue a temporary permit, on a form developed by DMV, to the convicted driver. This permit is valid until midnight on the day of the conviction. Its enactment, we believe, has substantially increased the number of courts who are picking up and forwarding licenses to the Division at the time of conviction.

But the problem is not solved. ORS 482.570 requires the Division to give notice of suspension. Thus, upon conviction a person is not legally suspended, even though the court takes his license and mails it in, until the Division issues an order. As one district judge put it, "with or without a permit the individual is validly licensed and is not suspended even though he may not have his license on his person."

The interval between the time the court convicts, picks up the license and forwards it and an abstract to the Division is usually about six days. It may be as long as 10 days. We have sought and continue to seek ways to shorten this time, but some delay is inevitable when we rely on mail deliveries.

It seems to us, however, that the problem could be partially alleviated by an amendment of ORS 482.470. The amendment would provide that in cases in which an offense results in mandatory suspension, the court should not only pick up the license and immediately forward it to the division but should also issue a suspension order to the driver at that time.

The section should be further amended to provide that "for purposes of ORS 482.570 the action or issuance by the court shall be construed as sufficient notice of suspension." (ORS 482.570 requires notice of suspension and provides the method of notification.)

The court could then forward the abstract and the license, and a copy of the order, to the division for entry on the driver's record. We also are contemplating the possibility that the time lag between conviction and pick-up of license and entry to the computer might be further reduced if in these cases only, the court, using the LEDS network located in most police agencies, immediately teletyped the needed facts to DMV. This could mean a computer update within 24 hours. (The abstract, license and suspension order copy could then be forwarded by mail.)

NOTICE OF SUSPENSION (482.570)

The question of how to insure that a driver is properly notified of all suspension actions has long been a subject of discussion among licensing authorities, courts and legislators.

In an attempt to resolve the problem, the 1973 Legislature enacted SB 637. This was a bill we believed to be a step in the wrong direction, and experience during the first three months tends to confirm this opinion. In May last year, the Court of Appeals handed down a decision (State v Buen) that we believe would have, with time, relieved much of the problem dealing with notices of suspension to drivers.

Unfortunately, before this decision could really begin to have a full impact on the courts, SB 637 was enacted requiring that when notice is sent by certified mail and returned, the receipt unsigned, service of notice shall be accomplished by personal service. The fee for personal service is $7.50.

The experience to date with personal service has been less than encouraging. In December, personal service was successful on less than 18 per cent of the cases on which it became necessary to take this step. The two previous months were even lower on the success scale. Through November, the actual cost, based on number of suspension notices successfully served, was $43.15 per notice.

We have been advised by sheriffs' offices that when service is attempted they often find that the address proves to be non-existent, a vacant lot, or a business address where the driver is unknown.

(One silver cloud is in the offing. We may soon experience a boom in Oregon drivers hastening to provide us with their correct, current addresses since the federal gas ration plan currently planned proposes to mail gasoline coupons based on driver license file addresses. Wrong addresses on file: no coupons.)

Our present recommendation: that SB 637 should be repealed and the law returned to the language adopted by the 1971 Legislature.

FIRST DUIL AND OCCUPATIONAL LICENSES (482.475 and 482.477)

Since 1969, when the Motor Vehicles Division completed its study of The Drinking Driver in Oregon, it has been obvious to us that mere suspension of a license to drive for ever-increasing periods of time did little good if the driver in question was a problem drinker. A problem drinker when suspended, he remained a problem drinker when reinstated.

It was for this reason that the Division in 1973 proposed legislation to permit at least partial reinstatement for a driver convicted of a second, third or subsequent offense for DUIL, providing that driver was able to show progress in an alcoholic rehabilitation program approved by the Mental Health Division.

It was our intent to lower the suspension period for a first conviction from 90 days to 30 days and to eliminate any provision for an occupational license during that 30-day period unless the person requested evaluation of his drinking problem and subsequently was diagnosed as a problem drinker following a first conviction. In this case, he would have the same opportunity for reinstatement following rehabilitation progress as the second or third offender.

Our logic or philosophy for this proposal was that a shorter, but absolute suspension period for a first offense, with no possibility of reinstatement, would be a very pointed lesson to the driver and would drive home in clear language the message that the state did not tolerate drinking and driving.

During the legislative process, the rehabilitation bill and the penalty bill (HB 2275) were merged. Our original concept was lost. The 90-day suspension was now 30 days, but the occupational provision following first conviction remained.

The result has been an exercise in paperwork for the court, the Motor Vehicles Division and the licensee. Courts almost uniformly recommend an occupational license for the first offender, even with the shortened period. We have had cases where the convicted driver arrives at the Motor Vehicles Division carrying his own abstract of conviction, the judge's recommendation, the financial responsibility filing, and the reinstatement fee. He wants immediate issuance of an occupational license almost before we have had an opportunity to enter the conviction on the record or to check to determine that he is otherwise qualified. Sometimes, the licensee arrives without the FR filing and still expects, because he has a judge's recommendation, to walk out the door with his occupational license. Sometimes, the driver arrives with the court's recommendation in hand, but the Division has not yet received an abstract of conviction from the court.

Out-one-door and in-another-door suspensions for this, the most serious of traffic offenses, can do little to impress the offender with the seriousness of the offense. Nor can it eliminate the impression that either the Motor Vehicles Division, or the courts, or both, are giving mis-information or passing the buck -- snarling the driver in bureaucratic red tape.

The Division originally proposed lowering of the 90-day suspension to an absolute 30-day suspension, with no relief, because we believed that the certainty of suspension, with no "out," could be a deterrent to a second offense. An absolute 30-day suspension would be painful, but not paralyzing, and would serve as a very pointed reminder of the seriousness of the offense in the eyes of the state.

We would rather see the 30-day suspension for a first offense lowered still more -- to a 10, 15 or 20-day suspension, with no occupational provision, than the present system of 30 days with an occupational license that is almost a foregone conclusion.

As a traffic safety measure, the length of suspension may not be nearly as important as the absolute certainty of the suspension. But the fact that it is possible to turn a 30-day suspension, or previously a 90-day suspension, into a five-day or shorter grounding leaves many first offenders convinced that there's always a way "out" and may actually encourage some to run the risk of a second charge. It's then the axe really falls -- but too late for the driver to have learned his lesson.

EXHIBIT E, Page 1
Committee on Judiciary
Subcommittee on Adjudication
January 9, 1974

LEE JOHNSON
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
STATE OFFICE BUILDING
SALEM, OREGON 97310

TELEPHONE: (503) 378-4400

January 9, 1974

Hon. George Cole
Chairman
House Committee on Judiciary
Capitol Building
Salem, Oregon

Subject: Federal Emergency Highway Energy Conservation Act

Dear Representative Cole

As you know, Congress enacted on January 3 the Federal Emergency Highway Energy Conservation Act which I believe will require legislative action during the coming special session of the legislature. The pertinent provision of the federal Act provides:

> "Sec. 2. (a) The purpose of this section is to conserve fuel during periods of current and imminent fuel shortages through the establishment of a national maximum highway speed limit.
> "(b) After the sixtieth day after the date of enactment of this Act, the Secretary of Transportation shall not approve any project under section 106 of title 23 of the United States Code in any State which has (1) a maximum speed limit on any public highway within its jurisdiction in excess of 55 miles per hour, . . . " (emphasis supplied) (H.R. 11372).

In November of this year, at the request of Governor McCall, the State Transportation Commission and the State Speed Control Board ordered that the "designated speed" be reduced on all state highways to a uniform level of 55 miles per hour. State police reports indicate that as a result of this action most vehicles on the state highways have been observing a 55 mile limit. However, it is questionable whether this action by the two boards is sufficient to satisfy the federal law and as a consequence would jeopardize the state's eligibility for federal highway funds.

As you know, Oregon is governed by the basic speed rule which prohibits any person from driving a vehicle at a greater speed than is reasonable and prudent. ORS 483.102. The "designated speeds" specified by the State Transportation Commission and the

State Speed Control Board merely establish a prima facia case of violation of the basic rule. It is difficult to argue that a designated speed constitutes a maximum limit. The state does have maximum speed limits for trucks and buses. I enclose a copy of my letter to Governor McCall which explains the rationale for the lowering of the designated speed limits.

In view of this situation, I believe it is imperative that the legislature take action to insure that the state is in compliance with the Emergency Highway Conservation Act. We are submitting the actions that have been taken by the state to the Secretary of Transportation to ascertain whether he believes that Oregon's action is sufficient to comply with the federal law. However, due to the slowness of the federal decision making process, we may not have a decision for some time and of course, they could always reverse their decision.

It is therefore my recommendation that legislation be enacted during the special session of the legislature which would give the State Transportation Commission and the State Speed Control Board the authority not only to establish designated speed limits, but to establish a fixed maximum speed limit which would be subject to the same penalties that are prescribed for a violation of the basic rule. In addition, the standards for setting both designated and fixed speed limits by the Transportation Commission and the State Speed Control Board should be broadened to include not only traffic safety factors, but also energy conservation measures. It would seem to me that this is the most desirable way to meet the present emergency because it would leave considerable amount of administrative flexibility in case the gasoline shortage problem diminishes or other factors come into play. I personally doubt that there will be any reason to raise speed limits in the near future because all appearances are that the gasoline shortage will continue.

My office is presently preparing legislation along these lines and we would be glad to work with your committee in that regard.

Sincerely

LEE JOHNSON
Attorney General

bjm
cc: Hon. Jason Boe
Hon. Richard Eymann
Governor Tom McCall

Statement of Attorney General Lee Johnson
Administrative Handling of Traffic Offenses
House Committee on Judiciary 1/9/74

It has been my position for several years that administrative adjudications of most traffic offenses is preferable to the present process. Since the state first began passing traffic safety laws, the responsibility for enforcement of these laws has been imposed upon the criminal justice system. The result is that criminal offenses involving motor vehicles have become the tail which wags the dog in the criminal justice system, with a consequent dissipation of criminal justice resources.

It is totally inappropriate to treat most traffic offenses in the same manner as we treat other crimes. The Criminal Code is designed primarily to deal with anti-social conduct where the deviation from social norms is substantial and where there is a great threat to persons or property. If we are going to have an effective criminal justice system, we should concentrate criminal justice resources at combatting that type of conduct and not impose additional burdens on the system which divert the system from its objective. The caseload of our lower courts (justice, municipal, district) is primarily taken up with traffic offenses. These lower courts and also the circuit courts are being clogged with DUIL cases. Many of the disputes that are litigated in the criminal justice system are not of a sufficient magnitude to justify the imposition of jail sentences and the consequent constitutional requirements that must be complied with. It is time that we examine a more efficient means for establishing an effective traffic safety deterrent outside of the criminal justice system.

This is not to say that the criminal justice system will not have to play a substantial role in enforcing a traffic safety code. To the contrary, the primary responsibility will still have to remain with police agencies for indentification of the offender. Likewise, there are certain forms of conduct related to traffic safety which should appropriately continue to be treated as violations of the criminal law. But the great bulk of offenses should be treated as an administrative law matter.

I would first like to examine those offenses which I believe should remain as criminal. They would include all the present major traffic offenses except those relating to driving under the influence of alcohol. I think each of these other major traffic offenses should remain criminal, but the rationale therefore should be carefully examined, both from the standpoint of the elements of the offense and the penalties attached thereto. I make the following comments regarding each of these crimes.

1. Leaving the Scene of an Accident (Hit and Run). It is my view that this offense is a most serious offense, far more serious than such offenses as alluding arrest or escape, because they usually involve the imposition of physical injury upon the victim. It is an offense which clearly involves criminal intent of a high magnitude and it would be my recommendation that the maximum sentence be a Class C Felony.

2. Negligent Homicide and Reckless Driving. These two offenses both involve an element of criminal intent, i.e., a conscious disregard and likewise should continue to be criminal in nature. I think the offense of reckless driving should be re-examined and if the state can prove that the driver was driving in a manner which a reasonable man would conclude was reckless, this should be at least sufficient to establish a prima facia case. It is my personal opinion that we should even go one step further and make reckless driving malum prohibitum and that the only evidentiary question would be whether the driver was driving in such an erratic manner that under ordinary circumstances his conduct would constitute recklessness and evidence of his actual mental state would not be a defense.

3. Driving While License Suspended or Revoked. This is a different type of crime than 1. and 2. above because the same elements of criminality or danger to the public are not always necessarily present. Rather the problem that these statutes are directed at is essentially one using the judicial process as a means to enforce the administrative law. Indeed your committee might want to consider the possibility of not treating this as a crime, but rather as a matter of civil contempt. In any event, the present law needs to be strengthened. In many jurisdictions in the state, the courts have taken a very stringent attitude regarding notice of suspension with a result that the present statute is almost unenforceable.

We would recommend that the notice provisions and the administrative procedures for serving notice be reexamined. We have a variety of proposals to make in this area and would be glad to work with your committee on this issue.

4. DUIL. These cases, with the possible exception of basic rule violations, cause the most strain upon the criminal justice system. The city of Portland has recently gone through a federally funded DUIL program which called for stringent enforcement. I strongly suggest that the committee examine whether that program has been effective. There is no question that it has overloaded the district attorney's office and the district and circuit courts in Multnomah County.

There are two basic policy questions involved. First is is the substantive issue of who constitutes the real traffic hazard. The evidence that has come to my attention is conflicting. There is some reason to believe that the principal hazard is not the person who is moderately imparied by use of alcohol or drugs, but rather is the individual who in all likelihood is suffering from acute overuse. Present Oregon law in effect says that if a person is impaired to any perceptible degree, he has violated the law. As a practical matter it is doubtful that the law is enforced to that extent in most jurisdictions. It is questionable that the law can be enforced to that extent under the present mores of American society.

However, I would presume from the actions of recent legislatures that it is the legislative will to continue the prohibition against driving by any person who is impaired, regardless of the degree. If this is your decision, then that decision can be more effectively and efficiently implemented through the administrative process.

However, little would be accomplished by simply substituting an administrative procedure for the judicial process, but utilizing the existing DUIL statutes. This would simply transfer the long evidentiary inquiry as to whether the driver was "impaired to any perceptible degree" to the administrative apparatus. Instead, some change in the statutory standard relying on the definity of modern scientific techniques is desirable. To illustrate, under present Oregon law, if a person is apprehended with a blood alcohol content in excess of .15, he is guilty of a separate and distinct offense. Considering the relatively small evidentiary issue presented, it seems much more appropriate to try this issue in an administrative proceeding. If the legislature wants to remove from the highways the overwhelming majority of drivers who are impaired to any perceptible degree, then it should simply make it an administrative offense for anyone to drive who has a blood alcohol content in excess of .10. Practical experience has shown that the vast majority of successful DUIL prosecutions were where the blood alcohol content was .10 and above. Modern science, by means of the breathalyzer and the blood test, has provided us with a satisfactory method

for determining perceptible impairment. It is at least disputable whether every person who is so impaired is necessarily a traffic hazard. But if it is the legislature's desire to remove all those drivers from the highways who are perceptibly impaired, then it seems the only reasonable course is to rely on modern science to accomplish that objective and avoid the lengthy and resource-consuming process that presently goes on in a DUIL case. For those persons who have a blood alcohol content less than .10 or who refuse to take the breathalyzer test, it should still remain an offense, administrative in nature, to determine whether he was impaired to a perceptible degree. This would involve a very small number of cases because of the implied consent law and the fact that there are not a great many people who are perceptibly impaired at less than .10. In making this recommendation regarding blood alcohol content, I think the administrative penalty for a first offender should follow the present practice of a significant but not onerous fine and suspension not to exceed 30 days.

I recognize that some will interpret this as an extreme proposal. In response, I believe it is a moderate proposal, particularly if the first offense penalty is not overwhelmingly severe. It is certainly moderate if it is the legislature's desire to remove perceptibly impaired drivers from the highways. The only other alternative that I am aware of is that that is applied in Sweden where it is simply illegal to drive if you have consumed any alcohol.

The remaining traffic offenses are those that are designated under existing law as "minor." Next of these offenses, 73% are basic speed rule violations. Minor traffic offenses that go to trial are almost exclusively basic rule violations. All minor offenses should be handled through the administrative process with fixed uniform fines and administrative discretion in imposing suspension and revocation. It would further be my recommendation that we repeal the basic speed law and go to fixed speed limits. I have for years been a supporter of Oregon's basic speed rule because of the variety of driving needs and conditions that exist throughout the state. However, the energy crisis makes these considerations no longer appropriate. There is every indication that the shortage of gasoline in the United States is going to continue on a long-term basis, that there will be a conversion to smaller automobiles, and that driving at speeds in excess of 60 miles per hour will probably never again be appropriate. It is for this reason that the sensible course now would be to go to fixed speed limits and thereby remove either from the administrative process or the judicial process the painstaking evidentiary question of whether an individual was driving in a reasonable manner. Furthermore, I think that in fixing speed limits, there should be considerable more flexibility exercised than has been in the past in fixing designated speed limits. For example, speed limits of 25 miles per hour are totally appropriate in suburban areas during periods of high traffic conjestion. However, there is no reason why a separate and higher limit couldn't

be set for those hours of the day when it is generally not conjested. I think if we had this kind of flexibility, the objections to removing the basic rule would be greatly diminished.

The question which arises is what type of administrative process should be established. I think the most pressing consideration should be simplicity. I have not attempted to draft a specific proposal, but it would seem to me that every attempt should be made to establish fixed fines so that when an officer cites an individual, the citation would not only inform him of what he is being charged with, but also the amount of the fine. The individual would be further informed that he could either pay the fine or could seek an administrative hearing. Presumably under this procedure and particularly if you remove the evidentiary issues such as those that are involved in basic rule violations and DUIL cases, in most cases there would be no request for such hearings except in exceptional cases.

I would be glad to answer any questions.