Tape 11, Side 1 - 1155 to end
Side 2 - 1 to 928

COMMITTEE ON JUDICIARY

Subcommittee on Adjudication

April 30, 1974

Minutes

Members Present: Rep. George F. Cole, Chairman
Sen. George Eivers
Rep. Lewis B. Hampton
Rep. Norma Paulus

Excused: Sen. John D. Burns

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

Consulting Committee Members Present: Hon. Herbert M. Schwab, Chief Judge, Court of Appeals

Mr. Jack Frost, Oregon District Attorneys' Association

Agenda: Minutes of previous meeting

CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS
Consulting Committee Preliminary Draft No. 1 (Revised alternate with Consulting Committee amendments of April 5, 1974)

Rep. George F. Cole, Chairman, called the meeting to order at 10:00 a.m. in Room 14, State Capitol.

Minutes of meeting of March 29, 1974

Rep. Paulus moved the approval of the minutes of March 29, 1974. There being no objections, the minutes were approved as submitted.

CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS

Rep. Cole referred the members to the draft to be discussed and asked Mr. Paillette to give a brief explanation.

Commentary by Mr. Donald L. Paillette

Mr. Paillette pointed out that the committee books contained four adjudication drafts. The first draft encompassed an administrative adjudication approach, which was used for study purposes. The

second alternate draft classified offenses with respect to traffic offenses and did not attempt to set forth an administrative adjudication or a court procedure but was flexible enough to apply to either type of approach. The Third revised alternate draft was similar to the second but contained recommendations from Judge Schwab's memorandum and set out specific recommendations as to types of offenses that would be included in a decriminalized approach while leaving the procedure in the courts. The fourth draft, a revised alternate with Consulting Committee amendments, was the result of the meeting of April 5 of the Consulting Committee at which time certain amendments were approved and adopted by the Consulting Committee and which was on the agenda for discussion.

Section 1, explained Mr. Paillette, defines a "traffic infraction", which is almost identical to the definition of a "violation" in the Oregon Criminal Code. "Traffic infraction", he said, is the term used to classify noncriminal offenses that would not result in imprisonment. It would be necessary to amend ORS 161.505, defining an offense, to include the new term, if the proposed draft were adopted. Rep. Cole asked if subsection (1) would apply to infractions that were punishable by a combination of penalties, such as "fine and suspension", and Mr. Paillette replied that it would.

Mr. Paillette stated that section 2 classifies traffic infractions into four categories and all would be noncriminal.

Section 3 sets out a maximum fine for each traffic infraction classification, said Mr. Paillette. The court would fix the fine within the applicable limit.

Section 4, stated Mr. Paillette, sets out those offenses classified as crimes. During the drafting process, he said, the cross reference to the sections defining each of the offenses should be included and ultimately, if codified in ORS, would refer to the name of the offense as well as the statute defining it. Paragraph (d), subsection (1), he said, makes the distinction between driving a motor vehicle with a suspended license as a result of a moving violation and as a result of being unable to show financial responsibility. Although the first citation for a nonreckless DUIL or .15 driver would be an infraction, the second offense within a five year period would be classified a crime under paragraph (e) of subsection (1), explained Mr. Paillette. Subsection (3) specifies that in any jury trial of a traffic crime information pertaining to a previous conviction shall be made available only to the judge and not to the jury.

Mr. Paillette stated that section 5 eliminates the jury trial for traffic infractions and the burden of proof in the draft is a preponderance of the evidence. The pre-trial discovery provisions of the Criminal Procedure Code are adopted in subsection (3), said Mr. Paillette, and would apply to traffic infractions.

Under section 6, no counsel would be provided at public expense for any trial involving a traffic infraction.

Section 7, in order to simplify procedures, provides that the district attorney need not appear to represent the state unless specifically requested to by the trial judge, said Mr. Paillette. Rep. Hampton stated that he was concerned whether the judge would act in an accusatory manner and question and cross examine all witnesses. Judge Schwab added that what was contemplated was to recognize that the district attorney would not need to appear in all cases and to specify that the trial judge could request his appearance if needed. In most cases, said Judge Schwab, the parties concerned would only give their explanations.

Under section 8, explained Mr. Paillette, if a person commits a crime and a traffic infraction and is prosecuted for one offense, he can still be prosecuted for the other. However, he said, evidence of the first conviction would not be admissible in the second prosecution.

Section 9 gives a trial judge as many options as possible in dealing with an offender, said Mr. Paillette. It would give him authority to order suspensions and impose other license restrictions, to enforce payment of a fine or requirement that the defendant complete a MVD driving course or other rehabilitative program. Rep. Paulus suggested including in section 9 language that would repeal the statute that allows a judge to issue a temporary permit to drive.

Mr. Paillette explained that section 10 adopts the appeals provisions of Senate Bill 403 (1973). Judge Schwab added that an appeal would go directly to the Court of Appeals and not to the circuit court.

Commentary by Hon. Herbert M. Schwab

Judge Schwab gave a brief background explanation of each member of the Consulting Committee. The Consulting Committee, he explained, has made an effort to study the present court system and make decisions as to what could be done to make it work better and more efficiently. The main cause of congestion in the courts, he said, is the handling of DUIL and .15 cases and the conclusion has been reached that these cases need to be handled differently. The ultimate goal, stated Judge Schwab, would be to put into effect a more effective system to get drunken drivers off the highways. The addition of more judges would not solve the problem. Under the present system, he said, in Klamath County 43 persons were arrested by the state police and seven months later 31 of the cases were either dismissed or reduced. One had been tried and the remainder were still waiting for a jury trial. In Lane County, he said, trial cases are being set nine months ahead. This type of problem is common in a number of the courts in the state, continued Judge Schwab.

The Consulting Committee, said Judge Schwab, has had to face the fact that as far as the public is concerned two extremes exist as to

how drunk drivers should be handled. One group believes that all drunk drivers should be thrown in jail and their drivers licenses suspended. Others feel, he continued, that a person should be allowed to drive until he has demonstrated that he is a poor driver by doing something wrong. The fact exists, said Judge Schwab, that a drunk driver who has committed his first offense and had not been driving recklessly or been involved in an accident rarely goes to jail. The system, however, is based on the concept that he will go to jail.

The requests for jury trials and the threat of jury trials and court cases for minor traffic infractions has been extremely time consuming, reported Judge Schwab. The fact that a case can be appealed de novo to the circuit court simply because someone doesn't like the decision is also time consuming and expensive, said Judge Schwab. Often a compromise is reached before a case comes up for trial in the circuit court and this tends to make a mockery out of the adjudication process.

Judge Schwab explained that most traffic offenders are not criminals and shouldn't be treated as criminals and that there is no reason to consider such actions as failing to make a left turn, having a defective light or failure to signal criminal offenses. A person who has committed his first DUIL or .15 simply because he has been to a wedding or some social function is basically not dangerous and is not a criminal, said Judge Schwab. The chances of his committing another similar offense are extremely rare. The worst offender would be the person who has proven himself to be a poor driver, has had his license suspended and commits a crime of intent by continuing to drive. With these facts in mind, reported Judge Schwab, the Consulting Committee proposes that all minor traffic offenses and first DUIL or .15 offenses that were not committed while driving recklessly and where no accident or injury was involved be civil infractions. Driving dangerously, driving with a suspended license for a moving violation, continuing to drive without insurance, eluding a police officer and a second DUIL or .15 within five years have been made crimes.

Under section 1 of the draft, said Judge Schwab, when it is stated that the criminal and criminal procedure laws of the state shall apply to traffic infractions, an attempt is being made to avoid cumbersome civil processes.

Section 2, explained Judge Schwab, contains a list of four traffic infractions, which are classified in such a way as to conform with the classification used in the Oregon Criminal Code.

The Consulting Committee, said Judge Schwab, had no definite recommendations for section 3 other than that the fine for a Class A traffic infraction should be substantial and the section consistent with the other sections. In answer to a question by Rep. Hampton, Judge Schwab replied that a DUIL offense, a .15, driving under the influence of drugs and hit and run where there would be property damage are Class A infractions. The habitual offenders would be handled under other regulations. Mr. Paillette called attention to

the commentary on page 7 of the draft, third paragraph, which states that "...presupposes that the three named offenses would be so classified in the substantive vehicle code." The last sentence in the paragraph states "If additional offenses were classified as Class A infractions in the substantive revision, they would automatically be included for the purpose of paragraph (e) of subsection (1)." Judge Schwab agreed with Mr. Paillette but stated that the Consulting Committee believes that those offenses already stated are the only ones considered so serious that if repeated within five years they become crimes.

Judge Schwab explained that when someone who has committed a DUIL and injured a person seriously only draws a 30 day jail sentence the fault is with the district attorney who has not used the assault statute.

Section 5, said Judge Schwab, states that a traffic infraction is not a crime and not punishable by a jail sentence; therefore, the civil burden of proof should apply. The right of appeal would exist, he said, on either side. Subsection (3) states the pre-trial discovery rules used in criminal cases would apply to traffic infractions, he said. This, he said, would hopefully keep the procedure from becoming cumbersome. In answer to a question by Rep. Hampton, Judge Schwab answered that there is a state statute that stipulates a city may pass its own statutes but cannot provide for penalties greater than the comparable state statute.

Mr. Paillette pointed out that the commentary under Section 6 states that four other states do not provide appointed counsel when the penalty does not include imprisonment. Judge Schwab added that in Oregon it is legal to suspend a driver's license for nonpayment of a fine, just as it is legal to suspend a license because a person doesn't have the money to buy insurance.

Judge Schwab explained, in answer to a question by Rep. Hampton, that he would prefer not to have statutory rulings regulating the appearance of an adviser with a defendant at a trial. Any decisions that might need to be made should be left up to the discretion of the judge, he said.

The argument that a drivers license cannot be suspended or restricted without a jury trial isn't valid, Judge Schwab said, because in the federal system a jury isn't required for any crime that carries a jail sentence of six months or less. Rep. Hampton added that doctors, lawyers and other licensed persons may have their licenses to practice suspended administratively.

The Consulting Committee, said Judge Schwab, does not object to an administrative hearings officer to handle civil infractions, but does feel the state isn't large enough to need the administrative system outside the court. The Committee believes that it is important to do away with inefficiencies and the threat of jury trials that now exist within the court system.

The provision in section 8, explained Judge Schwab, states if a defendant commits both a crime and traffic infraction in one episode the prosecution for one offense shall not bar the subsequent prosecution for the other. Another amendment, continued Judge Schwab, would be appropriate for section 8, or perhaps another section, that would provide that information such as failure to appear, plea of guilty or not guilty, or whether there was a fine, shall not be admissible in any other litigation. This, said Judge Schwab, would tend to do away with lengthy and expensive trials and hearings in order that the information or outcome could be used in another legal proceeding such as a personal injury suit. In answer to a question, Judge Schwab explained that the ruling wouldn't apply to testimony received. No one should be able to perjure himself and then claim immunity, continued Judge Schwab.

Rep. Hampton explained that he agreed with Judge Schwab in making the plea and the finding of guilty for a civil infraction not only inadmissible but not an adjudication. This way, he said, an infraction trial would be held solely for the purpose of the trial.

Chairman Cole added that information on the conviction of a single traffic infraction should not be admissible in a civil litigation. Judge Schwab agreed and indicated that section 8 should be enlarged to include that factor.

Judge Schwab stressed that to deliberately drive when a license has been suspended for a moving violation constitutes the most serious of all traffic crimes. Under the draft, the person who drives with a license that has been suspended because of no insurance commits a civil infraction, he said. If the offense, he continued, is repeated, it then becomes a moving violation. If the person continues and is apprehended a third time, the offense is then a crime. Mr. Jack Frost added that the real concern should be when the driving occurs when the suspension results from a court order.

Section 9

For all infractions, except Class A infractions, the penalty would be a fine. If a defendant refuses to pay the fine or comply with the condition upon which payment of the fine was suspended the judge can then restrict the license until the fine is paid. For a Class A infraction, if it is a second offense, the judge may, in addition to imposing a fine or imprisonment, suspend the drivers license until a driver improvement course is completed, continued Judge Schwab. It would be important, said Judge Schwab, for the judge to order the suspension and for the order to be processed in a prescribed manner as described in subsection (5), section 9 of the draft. The information should be readily available to the state police and some accurate method should be used to notify a person that his driver's license had been suspended.

Judge Schwab pointed out that it would be helpful to put up roadblocks and require automobiles to stop so that a check can be made to determine whether a driver has a license to drive. The state police, he continued, need to have available accurate information on the status of a particular record.

Judge Schwab explained that in criminal procedures a person is entitled to bail until tried and convicted. Once the individual is convicted and if given a jail sentence whether he goes to jail pending appeal, or continues on bail pending appeal, would depend on the discretion of the trial judge. The 1973 Legislature passed a law that gives a defendant the right to bail up until the time he is sentenced. Judge Schwab advised that a defendant could be given a stay, with legislation, pending an appeal, or it could be left to the discretion of the trial judge or the stipulation could be made that there would be no stay. He suggested that either one or two alternates could be used, but he advised against three. There would be no mandatory suspension for a first DUIL or .15 offense.

Rep. Paulus made the statement that it would be important for the subcommittee to accept the draft and for it to go on to the full committee for passage before the summer. It was her opinion that in order for such legislation to be accepted, it would be important to have editorial support and for the public to understand that it is meant to control drunk drivers and those drivers with suspended licenses. It would be an educational process that needs to be started before legislators are subjected to political pressures, she continued. Also, she said, the only real solution to the drunk driving problem would involve setting up community rehabilitation centers and drunk driving education courses. This would need to be done before the session in order to get the money allocated and the community agencies ready to make their requests for funds.

In answer to a question by Chairman Cole, Judge Schwab answered that he believed a person charged with a moving violation, who would refuse to take a Breathalizer test, would have his license suspended. The arrest, he said would have to be for drunken driving. Rep. Hampton added that a problem exists in that lawyers are advising clients to refuse to "blow" because all they would have then would be a 90 day suspension and not the increased insurance rates. He heard recently, continued Rep. Hampton, that insurance companies are considering raising insurance rates for those persons refusing to take a Breathalizer test.

In regard to paragraph (c), subsection (2), section 9, Chairman Cole asked if there shouldn't be a limit as to what the judge can impose in the way of a penalty for not participating in a rehabilitative program. Judge Schwab commented that a maximum limit could be stipulated, but added that failure to comply with instructions to participate in a rehabilitative program would be the same as failure to pay a fine. It was his belief, said Judge Schwab, as long as the

conditions are not unreasonable, the judge should have the authority to suspend until the driver complies with the court order. Rep. Hampton commented that he believed there should be some limit as to how long the license could be suspended.

Chairman Cole made reference to subsection (4), section 9 and asked about the procedure in notifying the court and the MVD that a license had been reinstated. Judge Schwab answered that the Consulting Committee has not tried to set forth a system of uniform orders and procedures. The Consulting Committee, he added, believed it would be best for the Minor Courts Committee to do this rather than have it done by statute, because it would be much more difficult to amend a statute.

Mr. Paillette reported that subsections (3) and (4) dealt with the role of MVD in the procedure. If the court informs a defendant that he would have to take a driving course offered by MVD, he would have to be notified by MVD when the course is completed. Judge Schwab added that procedures need to be set up involving rehabilitative programs offered through schools and other agencies. It would be essential, he said, that the judge be required to enter an order so that a record is established.

Mr. Frost commented that it would be important for procedures to be clearly stated so that there would be no problems.

Judge Schwab stated when a moving violation suspension is involved, it should be the judge who does the ordering and the reinstating.

Section 10. (Appeals.)

Judge Schwab reported that in 1971 the Legislature passed a law that in 1973 district courts would become courts of record. The 1973 Legislature delayed the effective date until July 1975. Because of anticipated problems the district judges were instrumental in having SB 403 introduced, which was in committee on adjournment. The bill provides that district courts become courts of record, a court reporter cannot be used except in a special case with an order from the Supreme Court, an appeal would go directly to the Court of Appeals and no typewritten transcript would be available on an appeal. It would be possible to purchase a copy of the tape for $5.00. In answer to a question regarding physical custody of the tapes, Judge Schwab answered that the original tapes would stay with the court and the copies would be made by the court.

A real problem with the district court has been that a decision is made on a case by the judge, and then the case is appealed and heard in the circuit court. Many times there are several different decisions on one type of case with no opinions published, which leads to confusion, said Judge Schwab. Also, he added, there is no reason for an additional appeal on cases originating in the district court.

Rep. Hampton expressed the opinion that it would be necessary for the Court of Appeals to relax its rules of evidence, and Judge Schwab agreed. An appeal, he said, should not be cumbersome and expensive. The Court of Appeals is responsible for its own rules on briefs, he said, and requirements can be simplified. Judge Schwab continued that once ground rules are defined and uniform rules established, most cases will be decided from the bench without written opinions. The fact that the state would be able to appeal on infractions as well as the defendant is going to make it possible to do away with the extremes.

Judge Schwab explained that he was in favor of the district courts becoming courts of record and with the provisions of SB 403 it would be much less costly than as set up now as scheduled for 1975. Senate Bill 403 does not do away with justice of the peace courts, said Judge Schwab. It might be well, he said, to require the justice of the peace courts to maintain the same standards as the municipal courts. A municipal court may become a court of record by putting a tape recorder in the court and appeals would be handled the same way as from district court. If the municipal court is to remain a court of nonrecord, then appeals from the court would be tried de novo in district court, if there is one, and if not, in circuit court.

One of the distinct differences between justice of the peace courts and district courts is that district court judges are required to be lawyers, said Judge Schwab. A recommendation of the Criminal Law Commission has been that appeals from district courts, where the judges are lawyers, may be reviewed for error, but appeals from justice of the peace and municipal courts with nonlawyer judges would be reviewed de novo. Rep. Hampton added that if a review on excessiveness or inappropriateness of sentence or disposition were given to the Court of Appeals, even on a review originating in district court, then it would be more acceptable. Judge Schwab agreed.

The Subcommittee recessed for lunch at 12:15, reconvening at 1:30.

Chairman Cole asked Judge Schwab his opinion on allowing or eliminating an appeal on the conviction of a traffic infraction and particularly pertaining to an administrative adjudication procedure. Judge Schwab answered that unless the offense would involve a very small fine or minor sentence and unless it would be made clear that it would not count on an administrative suspension for a habitual offender that a person should have one right of appeal. In any action of consequence against a person, the defendant should not be subjected to the possible prejudices of one individual, and to take away the right of appeal would be a mistake, continued Judge Schwab.

Judge Schwab stressed that any new system would have some unforeseen problems, and if any should develop, they can be corrected. He simply would hesitate, he said, to take away the jury trial and the right of appeal. He did not believe that appeals would be that much of a problem.

Mr. Frost commented that a problem exists in knowing what the rules are going to be in many of the traffic offense matters. It would be best, he continued, for the appeal process to be simple and available to both sides. Judge Schwab added the right to appeal for the state would apply only to civil infractions.

In answer to a question by Rep. Hampton as to a definable standard for review that would be short of a de novo but would still allow an escape as a safety valve. Judge Schwab replied that the substantial evidence rule would be a possibility. No trial is free of technical error, continued Judge Schwab, and if the results of a trial are extremely poor, some error can be found that would make it possible to reverse. Rep. Cole questioned how this would work with the administrative handling of traffic infractions. Judge Schwab answered that the volume in some courts on very minor offenses may be so great that additional personnel might need to be hired and given the authority to delegate certain functions to hear and make decisions in particular categories. In answer to another question by Chairman Cole as to whether it would be appropriate for the Legislature to pass legislation to give that permissive authority to the courts at the same time, Judge Schwab answered that he would prefer to have the courts function for two years without that particular legislation. He would prefer, he continued, not to give the authority to the judges to use at their discretion, but instead create the potential and let the Supreme Court decide when a particular district could adopt the procedure.

Rep. Hampton asked whether the authority could be given the courts to set up a procedure for the handling of bail forfeitures only where they could be mailed to a central agency. When the subcommittee visited the Marion County District Court the impression was that the process of getting written information before the judge was very time consuming and perhaps a procedure for this area would be appropriate. Judge Schwab answered that what would concern him would be the mechanics of setting up the procedure, making sure that it was needed by a court and then used only when needed. Mr. Frost agreed with Judge Schwab and added that in some muncipalities and some district court offices those procedures are already used and handled by an administrative person such as a district court clerk.

Several district judges, commented Chairman Cole, have stated, as Rep. Hampton mentioned about the Marion County District Court, that they read those pleas with explanation received by mail and then make decisions and that the process is very time consuming. Judge Schwab added that he wouldn't be adverse to having a hearings officer handle the mail pleas.

Senator Eivers reported that if the penalty for the very minor offenses is low enough the offenders would merely pay the fine and not bother with explanations. Something should be done, commented Sen. Eivers, so that information on minor offenses cannot be used to raise insurance premiums.

The members agreed to approve the concept of the draft and asked Mr. Paillette to revise it before sending it before the full committee. Mr. Paillette suggested contacting other agencies which would be directly involved in the outcome of the draft such as MVD and Traffic Safety Commission and ask for their views and opinions at a further meeting of the subcommittee.

Mr. Paillette explained that if a bill is adopted as a result of the draft, Oregon would be the first state to go this far with decriminalization. Statistics received so far from the district courts on the study being conducted, continued Mr. Paillette, clearly support Judge Schwab's position. The minor traffic offenses on the district court level are minimal and to alleviate the caseload and jury trials it would be necessary to do something about the DUILs, said Mr. Paillette.

Judge Schwab asked the subcommittee's permission to talk with an official of the Traffic Safety Commission regarding the draft. He would do this, he said, only after the draft has been finalized and stated that he had been asked by Mr. Gil Bellamy to speak before the Traffic Safety Commission on the subject. Rep. Paulus added that Judge Schwab definitely should talk to Mr. Bellamy.

Rep. Hampton suggested having Mr. Paillette draft a provision on the appeal question and then a note pointing out the possibilities for alternate provisions. He would favor, continued Rep. Hampton, review of errors of law directly by the Court of Appeals, as set out in SB 403, not only for excessiveness of sentence but appropriateness. In answer to a question by Chairman Cole, Judge Schwab answered that under the rules of SB 403, the Court of Appeals would have the power to establish rules and procedures for preparation, distribution, filing and challenging transcripts.

In answer to another question by Chairman Cole, Judge Schwab stated that it would be his recommendation to handle justice of the peace courts the same as district courts. Municipal courts would be handled on the basis of giving the municipalities the option of whether the courts would be courts of record. If a municipal court chose to be a court of record, definite rules would need to be followed, he said. If a municipal court would continue as now, appeals would go to the district court and would be de novo, continued Judge Schwab. In some areas where there are justice of the peace courts, there are no district courts and appeals would go to the circuit court, said Judge Schwab. A defendant, he said, would have the option according to statute to move his case to the circuit court.

Mr. Paillette raised the point that all municipal courts might not be courts of record, and how a case would be handled would depend into which city court it would be cited. Judge Schwab indicated that it would be up to the policeman to decide whether the offense was a violation of city ordinance or a violation of state statute, and he would then cite the case into the appropriate court. Rights of appeal differ for violation of city ordinance and state statute, he said.

Judge Schwab pointed out that the district court judges, except for perhaps two or three, are anxious for their courts to become courts of record. Also, continued Judge Schwab, the district court judges are anxious for their appeals to go directly to the Court of Appeals because they would then have some opinions and a uniform body of law.

Mr. Paillette asked whether the subcommittee wished, for the purposes of the next draft, to leave the portions from SB 403 on appeals the same as in the draft under discussion except for sections dealing with justice of the peace and municipal courts and not include the whole bill. If SB 403 is not included in its entirety, it will have to be written as a separate bill, he continued. Rep. Paulus commented that it should be part of the bill. Rep. Hampton stated that he would prefer to include the whole bill in the draft, but not if it would make it difficult to sell. Mr. Paillette added that he was concerned with the passage of the revision "package", including the adjudication procedure. It could at this time, he continued, be written as a companion draft, if the subcommittee wished to do so. The decision was made to leave the two separate and to allow the full committee to decide what course to follow. The Senate Bill deals only with district courts, and the municipal courts and justice of the peace courts would need to be dealt with separately, stated Mr. Paillette.

Judge Schwab explained that municipal courts are scheduling more cases into district court and particularly since the City of Portland has eliminated muncipal courts. Although there are those who strongly oppose justice of the peace courts, he continued, others recognize the fact that they are necessary in sparsely populated areas.

In section 1, subsection (3) the effect is to allow an arrest for a traffic infraction for a first occurrence, because under the Criminal Procedure Code an officer now can arrest for a violation, said Mr. Paillette. He asked whether the subcommittee members wished to leave that portion as is. Another question, he said, would pertain to searching a vehicle in connection with a traffic infraction. Rep. Hampton expressed the opinion that it should be left as is, because otherwise a definition would be needed for "stopping for the purpose of giving a citation" and then the question would exist whether the stopping would justify the checking of the vehicle. Judge Schwab informed the members that there will be case law on the subject that will indicate that a traffic stop and issuance of a citation cannot be used as a device to search. Before there can be an arrest and search, a reason needs to be given why there was an arrest rather than a citation, he said.

Mr. Paillette asked if it would be necessary to have an arrest for a traffic infraction and Judge Schwab answered that it wasn't and explained that there are two types of arrest. One, he continued, is for the purpose of inquiry and the other for taking into custody.

Mr. Frost explained that he was concerned about the person an officer only wishes to cite but who will not answer questions. It is possible, he said, for the person to simply refuse to cooperate and drive off. Judge Schwab stated that the person could be arrested on a misdemeanor. Mr. Paillette suggested that it be left as a traffic infraction and that an arrest not be specifically authorized. Rep. Hampton agreed that it should be left as it is presently stated.

Next meeting of Adjudication Subcommittee

June 4, 1974, was agreed upon as a tentative date for the next meeting of the subcommittee.

Chairman Cole adjourned the meeting at 2:30.

Respectfully submitted

Anna McNeil, Clerk
Subcommittee on Adjudication