Motor Vehicle Law Review

In this issue of the BULLETIN, Dr. Joseph P. Hennessee, AAMVA Counsel and Director, Uniform Laws Program, reviews another "habitual violator" case, as well as the reasonable and prudent speed rule, safety glass and rulings of the attorney general of South Dakota.

AAMVA members are invited to send Dr. Hennessee significant court decisions affecting all aspects of DMV administration for discussion in future issues.

Habitual Violators

Since the March issue of the BULLETIN went to press another "habitual violator" case has come to our attention. In this case, *Anderson* v. *Commissioner of Highways* (not yet reported), handed down February 14, 1964, the Minnesota Court upheld the provisions of Minn. St. 171.18(4) which gives the commissioner authority to suspend the license of any person, without a preliminary hearing, upon a showing that such driver is an "habitual violator," against a contention that it was unconstitutional as vague in failing to provide a clear and precise standard for action by the commissioner.

This court recognized the general rule that a statute which vests discretion in a public official must prescribe precise rules of action but noted that this rule is subject to exceptions and qualifications. The modern tendency is to be more liberal in permitting grants of discretion to administrative officers in order to facilitate the administration of laws (Annotation, 92 A.L.R. 410). The rule which requires an expressed standard to guide the exercise of discretion is subject to the exception that where it is impracticable to lay down a definite comprehensive rule—such as, where the administration turns upon questions of qualifications of personal fitness, or where the act relates to the administration of a police regulation which is necessary to protect the general health, welfare and safety of the public—it is not essential that a specific standard be expressly stated on the legislation. (Annotations, 12 A.L.R. 1147; 54 A.L.R. 1119; 92 A.L.R. 410.) This, the court said, is in accord with its previous decisions.

In reaching its decision, however, the court noted that there is a division among the courts of the several states as to the validity of traffic and license laws using the term "habitual violator," as evidence by *Harrell* v. *Scheidt*, 249 N.C. 699, 706, 107, S.E. 2d 549, 554 (1959) interpreting an identical provision, and *State Highway Department* v. *Harbin*, 226 S.C. 585, 86 S.E. 2d 446 (1955). The court also noted that legislatures in other states have, by statute, enacted a more specific rule. Texas, Missouri and Florida have, for example, by statute defined an habitual violator in terms of the number of his offenses. North and South Carolina (as noted also in the March issue of the BULLETIN), following adverse court rulings, have established legislative point systems for guidance in determining the status of a licensee as an habitual violator.

This court also upheld the use of driver license provision convictions in determining when a driver is in fact an habitual violator. This holding was based in part on the wording of Minn. St. 171.16 which requires courts to forward reports of convictions of "any law of this state regulating the operation of motor vehicles on streets or highways,"—except parking violations. This is in line with a recent decision of the Supreme Court of Washington, *State ex rel. Ralston* v. *Department of Licenses*, 60 Wash. 2d 535, 374 P. 2d 575, which permitted the director there to consider reports of convictions of municipal ordinances and use them as a basis for ordering suspension.

Information for the above case was provided by G. A. Hatfield, Drivers License Director, Minnesota Department of Highways.

Safety Glass

A declaratory judgment action decision, April 30, 1963, in the Law and Equity Court of the City of Richmond, Virginia, although not a ruling case, may be of interest to administrators. This case, instituted by Windshield Glass Distributors, Inc., against the Virginia Superintendent of State Police, presented two questions: (1) does tempered glass qualify as a safety glass under Virginia Code Section 46.1-293 prior to its amendment in 1960; and (2) is the 1960 amendment an unconstitutional delegation of legislative authority to nongovernmental organizations, in this case, the American Standards Association.

After discussing at length the statutory authority involved and the qualities of both tempered glass and laminated glass the court concluded that tempered glass meets the statutory requirement of Sec. 46.1-293, both before and after the 1960 amendment thereto, and that the 1960 amendment to such section is not unconstitutional. In reaching this decision as to the constitutional question, in the absence of Virginia law on the subject, the court relied upon *Union Bridge Co.* v. *U. S.*, 204 U. S. 364, 51 L.Ed. 523, a landmark case. See also, *St. Louis, etc., Ry.* v. *Taylor*, 210 U. S. 251, 52 L.Ed. 1061.

In reference to the American Standards Safety Code, the court said the following:

> In December, 1935, a tentative draft of a safety code purporting to set forth the specifications and methods of testing for safety glass as used for all purposes, including windshields and windows of all types of motor vehicles, motorboats and aircraft was prepared by a subcommittee of the American Standards Association. This work was sponsored by the National Bureau of Standards and the National Bureau of Casualty and Surety Underwriters and was approved by the American Standards Association. The latter group was at that time and is at present composed of representatives from all of the interested organizations concerned with safety development over the country at large, including various testing laboratories as well as governmental agencies. This safety code was formally approved in 1938 and as revised in 1950 has substantially the same specifications and testing standards as when originally adopted. This code contains the "standards and specifications" of American Standards Association, which are referred to in the 1960 Amendment to 46.1-293. This code differentiates between windshields and other windows in motor vehicles and approves only laminated glass for the former, but tempered glass for all others. With this single exception it accepts tempered glass as safety glass for all other motor vehicle glazing purposes. This separation of functions

MOTOR VEHICLE LAW REVIEW

In this issue of the Bulletin, Joseph P. Hennessee, Association Counsel, comments adversely on a "point system" decision from Kentucky and contrasts early land-mark decisions which upheld Kentucky's administrative Point System and voided a comparable point system in South Carolina.

Point System Suspension Voided

Kentucky's Administrative Point System for Driver Improvement, based upon KRS 186.570, was upheld by the Kentucky Court of Appeals in a landmark case in 1957. *Sturgill, Acting Commissioner of Public Safety* v. *Beard*, 303 S.W. 2d 908.

Doubts as to the validity of driver license suspensions—under Kentucky's point system, have been raised by the Kentucky Court of Appeals in another case, *Kentucky Department of Public Safety* v. *Glasscock*, decided on October 28, 1966, which affirmed a decision of the Jefferson Quarterly Court that voided a suspension under this self-same point system.

Under facts of the case, as reported by the Court, on May 20, 1965, the Department of Public Safety suspended Glasscock's license on the basis of his having accumulated twelve "points" within three years (KRS 186.570 (d) and PSfty regulations DI-5-1, DI-9, and DI-10). On June 14, 1965, Appellee Glasscock advised the Department pursuant to KRS 186.580 (2), Kentucky's Appeal statute, that he was "aggravated" by the suspension but did not advise as to the grounds for his grievance. On June 16 he petitioned for relief in the Jefferson Quarterly Court from the suspension and this relief was granted and the Department's order of suspension was set aside on grounds unspecified in this opinion.

The Department appealed, first, ostensibly to the Jefferson Circuit Court, which apparently affirmed the Quarterly Court order setting the suspension order aside. Upon appeal to the Court of Appeals the Department argued (1) that the judgment setting aside the suspension was void because the court lacked jurisdiction, (2) the proceedings were a void collateral attack upon another court's judgment, and (3) the scope of judicial review was exceeded.

The Department's first contention was that the Jefferson Quarterly Court acquired no jurisdiction because the Appellee was untimely in prosecuting his appeal there. This contention was based on the language of KRS 186.580 (2), which directs that the appeal to the Quarterly Court be filed "(i)n not less than fifteen nor more than thirty days . . ." The difficulty is that the statute is vague as in fixing the event from which the computation of time is to be made. The Department's position is that the computation is to be made not less than fifteen nor more than thirty days after the licensee reports his grievance to the Department; Glasscock's, that it means not less than fifteen nor more than thirty days after the Department's order of suspension. This Court agreed that the appeal was timely in that the "not less than fifteen, nor more than thirty days" dated from the date of the suspension, and held that failure of appellee to state his grounds for grievance was not fatal since this requirement is merely directive and not mandatory.

As to the second position advanced by the Department, a point relied upon by appellee (and apparently accepted by the Quarterly Court), was that the third violation for which points were assessed was not based upon a conviction by any court (although a fine was paid) although he availed himself of provisions of a city ordinance which permitted remittance of a prescribed fine and appointment of an attorney-in-fact to enter appellee's appearance and plea of guilty.

Appellee's position was based on language in *Sturgill* v. *Beard*, 303 S.W. 2d 908 (Ky. 1957) supra to the effect that a license may not be suspended (under the point system) except for "points" assessed pursuant to *convictions* of certain named moving traffic violations.

On this point the Court said it could concede, without deciding, that for purposes of this opinion, there was no "conviction" of appellee incident to his payment of a fine at the Louisville traffic bureau, but this concession would not be dispositive as, in the opinion of the Court, a "conviction" is not required as a condition precedent to the assessment of points. This is based on the Department's regulation PSfty-DI-4, which specifically provides that use of the "convenience" fine-paying procedure, as used here, was to be regarded as a "conviction" insofar as it relates to whether the operator may be considered to be a "reckless" one; and because the relevant statute (KRS 186.570) does not make the operator's "conviction" a condition precedent to Departmental action, but does specifically provided that the license may be suspended" . . . with or without a hearing, *and with or without receiving a record of conviction of that person of a crime*, whenever the Department had reason to believe: . . . (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws (emphasis supplied)". In the view of this Court, the use in *Beard* of the term "conviction" was an inadvertence and a dictum, and a "conviction" is not required. This apparently upheld the Department's contention that the proceedings below constituted an indirect attack on the police court judgment under which appellee waived appearance and paid a fine.

Up to this point the Court, while liberally construing the appeals provisions (KRS 186.580 (2), had done no violence to the Department's position. Through the second point, the Court seemed headed toward a reversal of the lower court and a confirmation of the Department's suspension order. Then without other explanation the Court said that the judgments of the Quarterly Court and of the Circuit Court recite that evidence was heard. "The evidence is not in the record before us. We must assume, therefore, that the evidence heard was sufficient to sustain the judgments of the Courts."

In affirming the judgments setting aside the suspension order the Court said "What we have said disposes of appellant's contention that the proceedings constituted an indirect attack on the police court judgment . . . , as well as the claim that the scope of judicial review was misconceived. The basic scope of the judicial review is concerned with the question of arbitrariness . . ."

If the basic scope of judicial review of departmental suspension orders comes down to a question of arbitrariness, as it may do, and as it does in the instant

decision, it is difficult to see how this Court could decide that the Department's suspension order was arbirary from a record of two judgments which contained no evidence and no apparent allegation of evidence or arbitrariness. The apparent effect of this decision is to require that a departmental hearing be afforded before suspension under the point system in order to avoid reversal on the grounds of arbitrary action by the Department.

Kentucky's point system was created on December 20, 1956, by a series of three administrative regulations, PSfty DI-1, DI-2, and DI-3, which (1) established a point system for driver improvement, (2) set out a schedule of points, and (3) provided a mandatory suspension upon an accumulation of 12 points within a three year period.

Suspension under this point system was first upheld in *Sturgill, Acting Commissioner of Public Safety* v. *Beard*, 303 S.W. 2d 908 (Ky. 1957). A review of that decision follows.

Beard's license was suspended under the point system. In seeking a return of his license Beard contended that (1) KRS 186.570 upon which the point system regulations were based, was an unconstitutional delegation of legislative power without any criteria or standards for an administrative agency to follow; (2) the point system, as applied to him in the suspension of his license violated the due process provisions of the Fourteenth Amendment to the Constitution of the United States; and (3) action in suspending his license based upon violations occurring prior to the effective date of the regulations establishing the point system was void as an *ex post facto* application of the law.

In upholding this suspension and the point system on which it was based the Kentucky Court of Appeals rejected the contention that KRS. 186.570 was unconsitutional as a delegation of legislative powers without providing any criteria or standards. In holding that there was no violation of due process in the suspension of Beard's license under the point system the court said it was too late to contend, as was done here, that one had a natural right to operate a motor vehicle because it is a privilege granted by a license of the state, subject to reasonable regulation by the state in the exercise of its police powers, and when the conditions imposed by the license are violated (as here), the suspension of the license is not a denial of "due process".

Beard's claim that the regulation had been used retroactively against him was given short shrift. This claim evaporates, the Court said, when the provisions of KRS 186.570, enacted in 1936, are applied to the facts. It is obvious that there was no ex post facto application of the law and the mere fact that the Department used the point system in making its determination to suspend did not make the application of the regulation retroactive. The Court did imply, however, that application of the regulations so as to assign points to violations occurring prior to the 1936 enactment of KRS 186.570 might constitute a retroactive or *ex post facto* application of this statute.

By way of contrast, the opinion of the South Carolina Court in *South Carolina State Highway Department* v. *Harbin*, 226 S.C. 585, 86 S.E. 2d 466 (1955), should be noted.

This case, like the *Beard* case in Kentucky, turned initially on whether the Department had any legal authority to promulgate a point system.

On November 24, 1953, the South Carolina State Highway Department, relying upon the authority contained in Section 46-172 of the 1952 Code, established a point system by administrative rule. This section provided that "For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year."

Following issuance of this order Harbin accumulated a total of 12 points. After a personal interview (hearing), as provided in the point system order, Harbin's license was suspended for five months. Upon his petition for a court review of this suspension the trial court held that the Department was without authority to put a point system into effect and revoked its action in suspending Harbin's license.

Upon appeal to the South Carolina Supreme Court the Department conceded that it was not "expressly" empowered to adopt a point system but contended that the power to do so was contained in the broad powers to refuse, suspend or revoke a license contained in Section 46-172. This, the Department said, gave it authority to set up a point system which embodied reasonable criteria to be used in the exercise of its discretionary power, and that a point system is in accord with the legislative policy expressed in that section.

Harbin, on the other hand, contended among other things that 46-172 fixed no standards and laid down no intelligible guides to which the Department must conform but left the right to revoke or suspend in the unrestricted and uncontrolled discretion of the Department, and that this rendered the section void as an unconstitutional delegation of legislative authority.

In reaching a decision the Court noted that it was unnecessary to go beyond the basic issue of whether the power granted in 46-172 was unconstitutional on the grounds that suspensions are left to the absolute, unregulated and undefined discretion of the Department.

It is accepted, the Court said, that although a legislature cannot delegate its legislative power it can authorize an administrative agency to fill in details by prescribing rules and regulations. "It is necessary, however, that the law declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative body must conform, with a proper regard for the public interest."

When the authority of the State Highway Department to suspend or revoke a license for cause which it deems satisfactory is considered in the light of the principles enunciated above, the Court said, such provisions must be held invalid as an unconstitutional delegation of legislative powers. Thus, having held that the statute relied on to support the point system was unconsitutional it followed, and the Court so held, that the Department was "without authority" to establish a point system and such a system was without force or effect.

Left unsettled were the questions as to "reasonableness" of the South Carolina system, and whether suspensions under such system would be violative of due process.

1967 Program

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In addition to the specific programs outlined, much staff time and effort will be devoted to intensified work in keeping informed of international, federal and jurisdiction developments, and increased service to members through visits by regional representatives and staff specialists, development of legislative guidelines, participation in in-service training, and correspondence.

CHAPTER EIGHT

A LEGAL STUDY OF POINT SYSTEMS

By JOSEPH P. HENNESSEE
Assistant Director, Institute of Government

INTRODUCTION

As was to be expected of any new system, especially a system which affects upwards of half the driving populations of the United States and Canada, public reaction to point systems has been widespread and varied. In general it may be said that the reaction of the public has been favorable; the reaction of those whose licenses have been affected by a point system, something less than favorable.[1] There is nothing to indicate, however, that this reaction is essentially different from the reaction to license sanctions applied under any other system.

Significant of the public and legal acceptance of the theory and application of point systems is the paucity of cases reaching the appellate courts in which point systems have been challenged on legal grounds. This is not to say that there is no case law applicable to point systems other than that found in cases in which point systems have been challenged. That would be an implication that point systems are to be gauged and judged by a body of law peculiar to point systems. That is not the case. In fact, point systems are subject to the same legal rules and principles that govern other systems of license suspensions and revocations. This fact is borne out in a study of the two available point system cases.[2] We can go further and say that there exists no separate body of legal precepts and principles applicable peculiarly to drivers license suspensions. Rather, all systems of license suspensions are governed by general principles of constitutional law and statutory construction. It is the purpose of this study to examine these general principles of law, compare their application in

1. *See* Kneipp, *The Traffic Point System as used in the District of Columbia*. 8 Traffic Quarterly 235 (1954).

2. *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 86 S.E. 2d 466 (1955); *Sturgill, Acting Commissioner of Public Safety v. Beard*, 303 S.W. 2d 908 (Ky. 1957).

applicable cases, and measure existing point systems against them.

BASIS FOR REGULATION

It no longer permits of doubt that the legislature in the exercise of its police powers may regulate and control drivers through licensing procedures. This premise has been upheld in the courts so many times that it no longer requires citation of legal authority.

POLICE POWERS

What do we mean by "police powers"? It is generally recognized that it is impossible to give an exact definition of the term. Many attempts at definition, however, have been made. Blackstone defined it as "the due regulation and domestic order of the kingdom, whereby the individual of the states, like members of a well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, good manners, and to be decent, industrious and inoffensive in their respective stations."[3]

It has been said that the police power is merely another name for the authority which every sovereignty possesses to pass all laws for the internal regulation and government of the state, and that it embraces and comprises all that portion of the sovereignty of the states not surrendered by the terms of the Federal Constitution to the Federal Government.[5] Others have said that it is the inherent and plenary power in a state over persons and property which enables the people to prohibit all things thought to be harmful to the comfort, safety, health and welfare of society.[6] It has been broadly defined by the United States Supreme Court as "that power, inherent in the state, whereby it may enact and enforce all laws for the protection, maintenance or advancement of the health, safety, morals, comfort, quiet, convenience, welfare, and prosperity of the people."[7]

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3. 11 Am. Jur. 971-972

4. *Mutual Loan Company v. Martell*, 222 U.S. 225, 32 S. Ct. 74, 56 L. Ed. 175, Ann. Cas. 1913B, 520 (1915).

5. *Slaughter House Cases*, 16 Wall. (U. S.) 36, 21 L. Ed. 394 (1873).

6. *Drysdale v. Prudden*, 195 N. C. 722, 143 S. E. 530 (1928).

7. *C. B. & Q. R. R. v. State of Illinois*, 200 U. S. 561, 26 S. Ct. 341, 50 L. Ed. 596 (1906).

It is not to be supposed from the foregoing that the police power is unlimited. Speaking of this power, the United States Supreme Court has said that it can be used to interfere with the conduct of individuals and the use of their property only, in-so-far as may be required to effect the peace, good order, morals and health of the community.[8] Expressed another way, the Supreme Court has said that before the power may be invoked it must be made to appear that the interest of the public in general as distinguished from a particular class or group requires such interference, and that the means chosen must be reasonably necessary to accomplish the desired purpose, and not be unduly oppressive upon individuals.[9] These are affirmations of the guarantees contained in the Fourteenth Amendment that no state may make or enforce any laws which will "deny to any person within its jurisdiction the equal protection of the laws" nor shall any state "deprive any person of life, liberty or property without due process of law." For example, the Court has pointed out that the Fourteenth Amendment requires that governmental regulations be accomplished by methods consistent with due process and that the due process clause is a limitation upon an improper exercise of the police power by the states in that it prevents an arbitrary or unreasonable exercise of the power either through laws or regulations.[10] In considering the relationship between the equal protection clause of the Fourteenth Amendment and the police power of the states, it is well settled that the police power is subordinate to the constitutional guarantee of equal privilege and that any attempted exercise of the police power which results in a denial of the equal protection of the law is invalid.[11]

Another limitation upon the exercise of the police power is the prohibition, contained in Section 10 (1), Article I, of the Constitution of the United States, against the passage of any *ex post facto* laws.

Summarizing, we can say that the legislature, in the exercise of its police powers, may properly regulate the conduct of individuals and the use of their property but that the methods chosen must have some reasonable relationship to the object sought to

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8. *Munn v. Illinois*, 94 U. S. 113, (1877).

9. *Lawton v. Steele*, 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385 (1893).

10. *Nebbia v. New York*, 291 U. S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A. L. R. 1469 (1934).

11. *Smith v. Cahoon*, 283 U. S. 553, 51 S. Ct. 582, 75 L. Ed. 1264 (1931).

be obtained, be consistent with due process, apply in a like manner to all persons similarly situated, and be prospective rather than retroactive in their application and effect.

DUE PROCESS

Writers on the subject state almost without exception that a license to operate a motor vehicle is a "privilege" and not a "property right" and that being a "privilege" it is subject to regulation under the police powers of the states. This has been accepted as the weight of authority in the American court jurisdictions. This distinction was meaningful because it assumed that the due process clause of the federal constitution did not apply unless a license to drive was a "property right." This distinction has lost much of its meaningfulness in view of a holding in the federal courts that whether you call it a "privilege" or a "property right," the freedom to make use of one's property, in this instance a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a "liberty," which, under the Fourteenth Amendment cannot be curtailed or denied by a state without due process of law.[12]

This line of thought is being adopted by state courts as well. The question of whether a license to operate a motor vehicle was a property right within the meaning of the Fourteenth Amendment was thought to have been put to rest, in Rhode Island, at least, in the classic case of *La Plante v. State Board of Public Roads*, decided in 1926.[13] At that time the court held that a "license" to operate an automobile, being a permit to do that which would otherwise be unlawful, was merely a "privilege" and not a "property right" within the meaning of the "due process" clauses of the United States and Rhode Island Constitutions, and that provisions for revocation of such license by the State Board of Public Roads without a hearing did not operate so as to deprive the driver of his property without due process

12. *Wall v. King*, 206 F. 2d 878 (First Circuit, 1953); *certiorari* denied Dec. 14, 1953.

13. 47 R. I. 258, 131 A. 641 (1926).

of law. In *Berberian v. Lussier*,[14] decided this year, the Rhode Island Court has retreated from this position with these words:[15]

> We have, however, come to the conclusion that we can no longer completely subscribe to the proposition for which the *La Plante* case stands. The use of the automobile as a necessary adjunct to the earning of a livinghood in modern life requires us in the interest of realism to conclude that the right to use an automobile on the public highways partakes of the nature of a *liberty* (emphasis supplied) within the meaning of the constitutional guarantees of which the citizen may not be deprived without due process of law. In *State v. Dalton*, 22 R. I. 77, at page 86, 46 A. 234, at page 237, 47 L. R. A. 775, this court pointed out that the liberty which is guaranteed to every person by both our state and federal constitution includes the right to be free from unreasonable interference in the pursuit of a livelihood. In the *Dalton* case at page 86, of 22 R. I., at page 237 of 46 A., quoting from *People v. Gillison*, 109 N.Y. 389, at 399, 17 N.E. 343, at page 345, we stated: "Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment, or restraint, but the right to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." The Court of Appeals of Louisiana in the case of *Hughes v. Department of Public Safety*, 79 So. 2d 129, recognized that although an operator's license was not a property right it was a right which was protected by the due process clause. In that case the court stated at page 130: "A license to operate a vehicle upon the highways of the state is a privilege and not a property right, although a state may not deny this privilege to any of its citizens arbitrarily or capriciously." The proposition that a license to operate motor vehicles and to use them on the public highways is something more than a mere privilege was also recognized in *Thompson v. Smith*, 155 Va. 367, 154 S. E. 539, 71 A. L. R. 604, and in *Escobedo v. State Department of Motor Vehicles*, 35 Cal. 2d 870, 222 P. 2d 1.

But, whatever may be its nature, the court concluded, the right to use the public highways for travel by motor vehicles is one which properly can be regulated by the legislature in the valid exercise of the police powers of the state.

North Carolina, in 1948, joined the list of states in which it is

14. — R. I. —, 139 A. 2d 869 (1958).

15. Because of the implications contained in this decision, and in the cases cited therein, it was thought advisable to quote applicable parts of the decision verbatim.

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16. *In re Wrig*
17. *Winnett*
18. 12 Am. J.
19. *Dartmouth*
629 (1819).
20. *King v. Pa*
L. Ed. 227; (189

recognized that a license is something more than a mere privilege, with a holding by the Supreme Court that "a license to operate a motor vehicle is a privilege in the nature of a right of which the license may not be deprived save in the manner and upon the conditions prescribed by statute."[16] This view was expanded in 1954 when the court said "the right to operate a motor vehicle on the highways by a licensed operator is granted by the state, and one should not be deprived of this right except as authorized by statute, in accordance with prescribed procedure, and in accord with the established rules of law."[17]

Implicit in these holdings is a warning that while operation of a motor vehicle upon the public highways and the licensing of drivers may properly be regulated by the legislatures under the police powers, the manner in which the use of the highways may be restrained or licenses refused or withdrawn must be consistent with the principles of due process.

What is meant by "due process"? As a practical matter due process is a protection against arbitrary and capricious actions affecting an individual's life, liberty and property. In a legal sense the essential ingredients of due process of law are notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case.[18] Daniel Webster said that by due process of law is meant "a law that hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."[19] It generally implies and includes regular allegations and opportunity for one to answer to the charges, to be confronted by the witnesses against him, to be able to offer testimony in his own behalf, and a trial according to some settled course of judicial proceedings.[20]

What may constitute due process in one situation may not constitute due process in another. For example, in the field of privileges, such as driver licenses, the legislature may provide a mandatory revocation upon conviction for specified offenses without making any provision for a hearing. In such a case, however,

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16. *In re Wright*, 228 N. C. 584, 46 S. E. 2d 696 (1948).

17. *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. 2d 501 (1954).

18. 12 Am. Jur. 267-268 and cases cited therein.

19. *Dartmouth College v. Woodward*, 4 Wheat. (U. S.) 518, 4 L. Ed. 629 (1819).

20. *King v. Panther Lumber Company*, 171 U. S. 437, 18 S. Ct. 573, 43 L. Ed. 227; (1898) *and see* Annotations, 13 L. R. A. 305.

convictions must be consistent with due process. When, however, an administrative agency has been authorized to suspend a license for specified reasons, due process requires that a licensee be given an opportunity for an administrative hearing upon the matter together with the right to have a judicial review of any administrative determination. The concept of due process does not, however, require that a hearing be granted prior to the taking of official action in exercise of the police power.[21]

Thus far we have considered in a general manner only, what constitutes due process. Moving from the general to the specific, the Pennsylvania Court in construing applicable provisions of the Pennsylvania statutes for the enforcement of regulations governing the operation of motor vehicles through revocation and suspension said:

> (but) If the constitutional provisions of due process were here applicable, they would be fully satisfied by the procedural steps specified in §§ 615 and 616 of the Vehicle Code. As we have seen, they require a hearing before the Secretary of Revenue or his representative. Suspension of the licensee's operating privilege is authorized only when the secretary finds upon sufficient evidence that the offenses enumerated have been committed. Section 616 allows an appeal to the Court of Common Pleas wherein the licensee resides. The licensee is given an opportunity to be heard and to produce witnesses in his behalf. Here the Secretary of Revenue fulfilled the statutory mandate by holding the hearing and by finding that the appellee had violated the motor vehicle laws of this Commonwealth. The appellee then availed himself of his right to be heard anew by the Common Pleas Court. This system sets up every requirement of due process of law, and an operator whose license has been revoked or suspended cannot complain that he has been arbitrarily deprived of the enjoyment of the privilege.[22]

The Idaho Supreme Court, on the other hand, has held that a statute which attempted to authorize the Commissioner to suspend the license of an operator without preliminary hearing, if the operator had been involved in an accident resulting in death, personal injury or serious property damage, irrespective of negli-

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21. *Berberian v. Lussier*, — R. I. —, 138 A. 2d 869 (1958).
22. *Commissioner v. Funk*, 322 Pa. 390, 186 A. 65 (1936).

gence or responsibility, and without provision for review of the Commissioner's action in a court of competent jurisdiction, was unconstitutional as a taking of property without due process.[23]

Summarizing, it is still the numerical weight of authority in American jurisdictions that a license to drive is a privilege and not a property right, and therefore without the constitutional guarantees of due process. However, there is a discernible tendency among state courts to hold to the federal view that a license to drive is something more than a privilege, and that the due process provisions of the federal constitution do apply.

EX POST FACTO LAWS PROHIBITED

Section 10 (1), Article I, of the Constitution contains a prohibition against passage or enforcement of any *ex post facto* law by any state. Authorities differ as to whether the prohibition against *ex post facto* laws applies to license suspensions based on convictions antedating the statutory authority to suspend for specified violations. Illinois, for example, held that an act authorizing the Secretary of State to revoke the driver's license of anyone convicted of driving while intoxicated did not apply to offenses committed before the act became effective.[24] California, on the other hand, has held that Section 309 of the Vehicle Code, which provided that the probationer's prior convictions should be considered as convictions for the purposes of revocation and suspension, was not invalid as an *ex post facto* law as applied to a motorist who, before that section was enacted, was twice convicted of drunken driving.[25]

A slightly different question was presented in a recent Kentucky decision. There the question was whether a suspension under the Kentucky point system based in part on violations occurring prior to the effective date of the point system regulations was an *ex post facto* or retroactive application of the regulations. In reaching a decision the court said that the claim that there was an *ex post facto* application evaporated when the provisions of KRS 186.570 were applied to the case. This statute, enacted in 1936, upon which the point system regulations were grounded, authorized the Department to suspend summarily the

23. *State v. Kouni*, 58 Idaho 493, 76 P. 2d 919 (1938).

24. *Monczak v. Carpenter*, 3 Ill. 2d 556, 121 N. E. 2d 762 (1953).

25. *Ellis v. Department of Motor Vehicles*, 51 Cal. App. 2d 753, 125 P. 2d 521 (1942).

license of any person whenever the Department had reason to believe that a person is an habitually reckless or negligent driver or has committed a serious violation of the motor vehicle laws. The mere fact that the Department used a point system in making its determination that he was an habitually reckless driver did not make the application of the regulation retroactive.[26] The careful manner in which the Kentucky Court limited its answer suggests that had such violations occurred prior to the effective date of the foundation statute a different answer would have been forthcoming.

SEPARATION OF POWERS

Both the federal and the various state governments operate under a separation of powers doctrine. Under this system specific powers are delegated to the legislative, executive and judicial branches of the government. For example, the sole authority to declare what the law shall be, subject to constitutional limitations, is vested in the legislative branch of the government;[27] the power to administer and enforce the law, in the executive branch;[28] and the judicial powers in the courts.[29]

American courts universally agree that no part of the legislative power may be delegated to a non-legislative body. There is no universality of agreement, however, as to what constitutes a delegation of legislative authority. Generally speaking, a law which confers discretion on executive officers without establishing any standards for guidance is a delegation of legislative powers and therefore unconstitutional. Where the discretion, however, relates to a police regulation for the protection of public morals, welfare, and safety, and it is impossible or impracticable to provide such standards, and to do so would defeat the legislative object, legislation conferring such jurisdiction may be upheld without such restrictions or limitations.[30] The United States Supreme Court has laid down this rule. The legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to

26. *Sturgill, Acting Commissioner v. Beard*, 303 S.W. 2d 908 (Ky. 1957).
27. Article I, Constitution of the United States.
28. Article II, Constitution of the United States.
29. Article III, Constitution of the United States.
30. *Benjamin v. City of Columbus*, 148 N.E. 2d 695 (Ohio, 1958).

which the policy and conditions apply."[31] In the final analysis, what constitutes an unconstitutional delegation of legislative powers must depend upon the individual facts in each situation.

Thompson v. Smith,[32] decided in Virginia in 1930, is perhaps the leading state case relative to an unconstitutional delegation of legislative authority in the drivers license field. A Virginia ordinance provided that the chief of police was authorized and directed to revoke the permit of any driver, who, in his opinion, became unfit to drive an automobile on the streets of the city. After Thompson was convicted of two speeding charges within one year, Smith, the police chief, purported to suspend Thompson's license under the authority above. In an action for the return of his license, Thompson alleged that the chief was without authority to revoke his permit because "(2) The provisions authorizing the chief of police to revoke the permit of any driver, *who, in his opinion*, becomes unfit to drive an automobile on the streets of the city is void because it is a delegation of legislative powers to an administrative agency in that it authorizes the chief of police to revoke a permit whenever *in his opinion* the holder thereof has done or omitted to do something the doing or the omission of which the chief thinks renders the holder unfit to drive an automobile on the streets, without prescribing any uniform rule, applicable to all persons alike, as to what constitutes unfitness to drive an automobile on the streets of the city, or laying down any rule for the guidance and control of the chief of police in determining what constitutes unfitness to drive an automobile on the streets of the city."

In holding that the lower court was in error in dismissing Thompson's action for the return of his license, the Supreme Court of Virginia said that it was a fundamental principle of our system of government that "the rights of men are to be determined by the law itself, and not by the lot or leave of administrative officers or bureaus. This principle," the court stated, "ought not to be surrendered for convenience or in effect nullified for the sake of expediency. It is the prerogative and function of the legislative branch of the government, whether state or municipal, to determine and declare what the law shall be, and the legis-

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31. *Mutual Film Corp. v. Ohio Industrial Comm.*, 236 U.S. 230, 35 S. Ct. 387, 59 L. Ed. 552, Ann. Cas. 1916C, 296 (1915).

32. 155 Va. 367, 154 S.E. 579 (1930).

lative branch of the government may not divest itself of this function, or delegate it to executive officers."

This does not mean, the court explained, that no discretion can be left to administrative officers in administering the law.

> Government could not be efficiently carried on if something could not be left to the judgment and discretion of administrative officers to accomplish in detail what is required by law in general terms. Without this power legislation would become either oppressive or inefficient. There would be confusion in the laws, and, in an effort to detail and particularize the law would miss sufficiency both in provisions and detail. This is particularly true where the discretion to be exercised by administrative officers relates to police regulations designed to protect the public morals, health, safety, and general welfare. A city may, in the execution of its police powers invest its administrative and executive officers with a reasonable discretion in the performance of duties devolved upon them to the end, whenever it is necessary for the safety and welfare of the public. *But, it should be added, the reasonable discretion which may be vested in its administrative officers is limited to a discretion in its essence ministerial and not legislative though it may be such as may be exercised by the legislature.*
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> In principle, legislation and administration are quite distinct powers; but in practical application the line which separates their exercise is not clearly marked or easily defined. However, in their definition in practical application, lies the difference between government by legislation and government by bureaucracy. . . .
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> The decisions of the various courts and sometimes of the same court, are in conflict as to what constitutes a delegation of legislative powers. The majority of cases lay down the rule that statutes or ordinances vesting discretion in administrative officers and bureaus must lay down rules and tests to guide and control them in the exercise of the discretion granted in order to be valid; but several courts apply the rule with varying degrees of strictness. Other cases go so far in sustaining, especially in cases involving police regulations, grants of discretionary powers to administrative officers and bureaus without prescribing any definite rule or specified condition to which the officers must conform, as, in effect, to substitute for government by legislation government by administrative officers and bureaus. For a collection of cases on this subject, see note in 12 *A.L.R.*, page 1435 and *seq.*
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> Where a statute or ordinance assumes to regulate the exercise of a common right, such as here involved, by requiring a permit for the exercise thereof, which is to be

granted or refused, and may be revoked, by an administrative officer in his discretion, the correct principles for determining whether it is void because it delegates legislative powers to the administrative officers are stated by the court in *Mutual Film Corporation v. Ohio Industrial Comm.*, 236 U.S. 239, 35 S.Ct. 387, 392, 59 L.Ed. 552, Ann. Cas. 1916C, 296,[33] in the following language: 'The legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply.'

The Court then looked to the terms of the ordinance, and measured them against the foregoing principles and stated:

> . . . but when we come to examine the provisions with reference to revocation of permits by the chief of police, the policy of the law and the legal principles which are to control the action of the chief of police are not determined or determinable from the terms of the ordinance. . . It fails to state to what standard of conduct the holder of a permit must conform to be immune from the official ax.

In 1956[34], the Wyoming Courts had occasion to pass upon a statute which provided: "Upon the termination of such investigation, the person or persons holding such investigation shall prepare findings based upon the evidence received and considered. The Department upon review of such findings may dismiss the proceedings or it may suspend or revoke the license of such person . . . ." Plaintiff contended that this provided for revocation or suspension of license upon grounds other than the wrongdoing, fault, negligence, crime, misdemeanor, incompetence, mental or physical infirmities or disabilities of the driver, or stated another way, that the statute provided no standards for the licensee, the violation of which would be cause for revocation.

The court stated that since this statute was unique among the 48 states that there was no value in reviewing decisions or statutes from other states. Then after citation of cases, it quoted with approval the language of *State v. Grimshaw*, 49 Wyo. 192, 53 P.2d 13, 16, that "if the legislature leaves to administrative officers the determination of what the law shall be; or to determine what acts are necessary to effectuate the law, such delegation of authority is void." The court held this to be the law in the instant case and held that the statute was an unconstitutional delegation of legislative power.

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33. See note 31, supra.

34. *Eastwood v. Highway Department*,—Wyo.—, 301 P. 2d 318 (1956).

Statutes are often attacked on the grounds that they are too vague and indefinite to constitute a sufficient definition of criminal conduct. In a case decided this year[35] the New York courts held that a provision relating to operating motor vehicles "at such speed as to endanger life, limb or property of any person or at a rate of speed greater than will permit bringing vehicle to a stop without injury to another or his property" was too vague and indefinite and did not contain sufficient standards by which a driver's conduct could be tested and therefore the statute was ineffective as basis for revocation of a driver's license. By way of contrast, the Oklahoma court had no difficulty in upholding a statute which prohibited operation of a motor vehicle at a speed "in excess of maximum safe and prudent speed as determined and posted by the State Highway Department."[36]

What constitutes an habitual violator has come in for some review by the courts. In *Lamb v. Rubin*,[37] decided in 1957, the Virginia court upheld a determination that a driver was an habitually reckless and negligent driver where the record showed nine convictions in approximately six years. In another Virginia case,[38] a record of five convictions from July 19, 1950, to May 6, 1955, plus three convictions from February 27, 1956 to June 1, 1956, was held to be sufficient to support a finding by the Commissioner that licensee was habitually reckless and negligent. New York courts have upheld a statute permitting the Commissioner to suspend a license for "habitual" or "persistent" violation of traffic laws and ordinances against a contention that the statute was unconstitutional on the grounds that legislative functions had been delegated to an administrative body without providing any criteria or standards defining the words "habitual" or "persistent."[39]

A Virginia statute[40] provided "Upon any reasonable ground appearing in the records of the division, the Commissioner may, when he deems it necessary for the safety of the public on the highways of this state, and after notice and hearing as herein-

35. *Brown v. Kelly*, 169 NYS 2d 20[illegible] (1958).
36. *Ludwig v. Yancey*, 318 P. 2d 450 (Okla. 1957).
37. 198 Va. 628, 96 S.E. 2d 80 (1957).
38. *Lambe v. Clarke*, 199 Va. 274, 99 S.E. 2d 597 (1957).
39. *Ross v. McDaff*, 309 N. Y. 56, 127 N.E. 2d 806 (1955).
40 *Michie* 1942 Code Supplement, Sec. 2154 (a 19).

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41. *Butler* [illegible]
42. See note

before provided, suspend or revoke for a period not to exceed five years, . . . the . . . license of any person who is a violator of the provisions of the Motor Vehicle Code." In upholding this section against an attack on the grounds that the section constituted an unconstitutional delegation of legislative power without providing any standards or controls to guide the actions of the Commissioner, the Virginia court pointed out that the section contained the following controls and limitations of the Commissioner's actions:[41]

(1) The Commissioner must deem the suspension or revocation "necessary for the safety of the public on the highways of this state."

(2) The ground upon which the conclusion of the Commissioner is based—that the safety of the public will be jeopardized unless the license is suspended—must appear "In the records of the Division" of Motor Vehicles.

(3) The grounds for the suspension must be "reasonable" both as to necessity therefor and duration thereof.

(4) The Commissioner must grant a hearing and give notice of the time and place. The right of review by a circuit court is provided for any person deeming himself aggrieved thereby.

(5) An appeal to the Supreme Court from the final judgment of the reviewing court is granted as a matter of right.

Here, the court said, "Under the general terms employed in the statute, it is clear that the cardinal principle or standard by which the exercise of the power conferred on the Commissioner must be guided and controlled is that the revocation of the operator's license . . . must be necessary for the safety of the public on the highways of this state."

Summarizing, we can say that under the doctrine of separation of powers the legislature may not divest itself of its duty to say what the law shall be, although it may, within prescribed limits, permit a non-legislative body to promulgate rules and regulations for the enforcement of the law. This rule, stated in the *Mutual Film* case[42] is clear enough, but the degree of strictness with which the rule will be applied by the various courts,

41. *Butler v. Commonwealth*, 189 Va. 411, 53 S.E. 2d 152 (1949).

42. See notes 31 and 33, *supra*.

and within a particular court, is subject to conjecture.

STATUTORY CONSTRUCTION

It is a general rule of statutory construction that a statute is presumed to be valid and will not be overthrown as unconstitutional if it can be sustained on any reasonable basis, and the burden is on the party attacking the constitutionality of a statute to establish the invalidating facts and its invalidity must be clearly shown.[43] This rule is limited, however, by another general rule that those sections of the constitution which provide for separation of the powers of the government, which constitute the keystone of our form of government, must be strictly construed. In this line, the Indiana Court has declared that "reasonable standards" must be imposed whenever the legislature delegates discretionary powers to an administrative officer or body.[44]

The Ohio Court states the rule to be that statutes must be read and interpreted in the light of those fundamental principles which protect a citizen in his private rights and guard him against arbitrary action of government.[45]

Generally speaking, the constitutional validity of a law is to be tested, not by what has been done under it, but by what may, by its authority be done.[46] But, like all legislation, statutes authorizing suspension and revocation of drivers must be interpreted in the light of their general purpose.[47]

Until a statute has been declared by a competent court to be unconstitutional, however, an administrative agency charged with the administration of the law is entitled to rely and act upon the statute as written and interpreted by the courts. In fact, in individual instances the statute may require that certain

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43. *In re Village of Lich Harbor*, — N. J. —, 135 A. 2d 869 (1957); *Book v. State Office Building Commission*, — Ind. —, 143 N.E. 2d 273 (1958); *In re Bloomer's Estate*, — Wisc. —, 87 N.W. 2d 781 (1958).

44. *Book v. State Office Building Commission*, — Ind. —, 143 N.E. 2d 273 (1958).

45. *In re Appropriation for Highway Purposes*, — Ohio —, 142 N.E. 2d 242 (1958).

46. *Cluett, Peabody & Co. v. Mays Inc.*, 170 N.Y.S. 2d 271 (1958). This view was also expressed in *South Carolina State Highway Department v. Harbin*, 226 S. C. 585, 86 S.E. 2d 466 (1955) and in the dissenting opinion in *Sturgill, Acting Commissioner v. Beard*, 303 S.W. 2d 82 (Ky. 1957).

47. *Commonwealth v. Bristow*, — Pa. —, 138 A. 2d 439 (1958).

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Beard, 303 S.W.

action be taken under given circumstances. Thus, where the statutes provide for a mandatory revocation it is the duty of the administrative agency to perform the purely ministerial function of imposing the revocation. Likewise, when the statutes give the administrative agency discretionary authority to take specified action upon receipt of notice of conviction, for example, for specified offenses, it is authorized to give full faith and credit both to the statute and to the conviction report.[48]

It is a well recognized principle of statutory construction that a court will not pass on the constitutionality of a law unless the constitutional issues are clearly presented and not even then if the decision can be made to turn upon some other factor. Thus, in *Winch v. Register of Motor Vehicles*, 135 N.E. 2d 17 (Mass. 1956), the court refused to pass on the constitutionality of a statute which imposed penalties for points upon failure of appellant to show imminent danger of harm from the statute or that he had a substantial controversy with the administrator and without his first having exhausted his administrative remedies.

The existence of a statute over a long period of years gives no certain assurance of its validity[49] and repassage of a statute may not act to approve or validate rules and regulations promulgated under it prior to its re-passage.[50]

In conclusion, we can say that statutes will be construed in the light of their stated purposes and that they are presumed to be valid. This conclusion is limited by the general rule that the constitutional provisions calling for separation of powers will be strictly construed.

COURT DECISIONS

A careful study of reported cases discloses only two instances in which point systems have been considered by ruling appellate courts in the American jurisdictions.[51] A study of the Dominion

48. See *In re Wright*, 228 N. C. 301, 45 S.E. 2d 370 (1947) and *In re Wright* 228 N. C. 584, 46 S.E. 2d 696 (1948).

49. *People v. Mamlacqua*, 170 N.Y.S. 2d 423 (1958).

50. *Los Angeles County v. State Board of Public Health*, 322 P. 2d 968 (Cal. App. 1958).

51. *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 86 S.E. 2d 466, (1955). *Sturgill, Acting Commissioner of Public Safety v. Beard*, 303 S.W. 2d 903 (1957).

Reports discloses no Canadian point system cases.

Of the two American cases, both concerned point systems created by administrative regulation without express legislative authority. No ruling cases have been found wherein the legality of statutory or permissive point systems have been considered. In the first of these, from South Carolina, the statute relied upon as authority for setting up the system was voided as an unconstitutional delegation of legislative powers. In the second, from Kentucky, the Kentucky Court of Appeals upheld the constitutionality of the statutory authority relied upon and the reasonableness of the system. Although reaching opposite conclusions, the cases are distinguishable on the basis of differences in the language of the statutory authority relied upon. Considering this difference in statutory phraseology, it is submitted that the decisions are not in conflict.

On November 24, 1953, the South Carolina State Highway Department, relying upon the authority contained in Section 46-172 of the 1952 Code,[52] established a point system by administrative rule.[53] This rule, among other things, recited that the

52 §46-172.—For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year.

53. In order to do everything within reason to reduce traffic accidents the Department will commence immediately to charge each violation committed and reported to the Department against the record of each offending driver. Each violation will be graded as to seriousness in accordance with the following table which is based on violations involved in accidents during 1952.

Moving Violation	*Violation Points*
Disregarding sign or signal	3½
Driving under influence	10
Entering highway without stopping	3½
Following too closely	2
No right-of-way	3½
Improper passing	2
Passing stopped school bus	3½
Reckless Driving	5
Driving too fast for conditions	3½
Improper turning	2
Driving on wrong side of road	2
Failure to dim lights	2
Improper lights	2
No signal or improper signal	2

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point system was created for the purpose of reducing traffic accidents, set forth a detailed schedule of points for violations and warnings, and provided that upon an accumulation of 10 points a driver was to be brought in for a personal interview by the highway patrol to determine if his license should be taken. A further violation, where a driver was permitted to keep his license, was deemed sufficient grounds for immediate suspension.

Following the issuance of this order Harbin accumulated a total of 12 points, 10 for speeding violations and 2 for a warning. Following notice to appear for an interview, as provided in the order, an interview, and a recommendation that a suspension issue, Harbin's license was suspended for a period of five months. Upon Harbin's petition for a court review of the Department's action in suspending his license the lower court held that the

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Improper parking 2
Responsibility for accident involving personal injury and/or property damage in excess of $100 5
If while driving under the influence 10
Responsibility for accident involving no personal injury and property damage of $100 or less (or point violation value, whichever is higher) 2
All warnings and minor violations 2

When the total of violation points charged against a driver reaches a minimum of 10 the driver will be personally interviewed by a member of the Highway Patrol for the purposes of determining whether the offender's license to drive should be suspended or whether it appears from the circumstances that he should be allowed another chance. In cases where the driver is permitted to retain his license after the interview any additional violation committed by him will be deemed sufficient grounds for an immediate suspension of his license. The Department, of course, has no discretion where cases involve driving under the influence of intoxicants or narcotic drugs, reckless homicide, and two convictions for reckless driving. The suspension of drivers' licenses under these circumstances is required by law.

Highway Patrol personnel conducting the personal interview will approach the work in a spirit of helpfulness and with utmost courtesy. The primary purpose of the program is to make better and safer drivers, and not to suspend licenses except where other efforts in this direction have failed.

In order to give this program maximum effectiveness members of the highway patrol should exert every effort to encourage local enforcement officers to send to the Department copies of all violation warnings and summonses issued by them, and copies of reports of all accidents they investigate.

Department was without authority to put a point system into effect and revoked its action in suspending Harbin's license.

Upon appeal to the South Carolina Supreme Court the Department conceded that it was not "expressly" empowered to adopt a point system but contended that the power to do this was contained in the broad powers to refuse, suspend or revoke a license contained in Act number 603, April 4, 1930, 36 St. at Large, 1057, then codified in Chapter 2 of Title 46 of the 1952 Code as Section 46-172. This section read as follows:

> §46-172.—For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year . . . .

This, the Department contended, gave it the authority to set up a point system which it said embodied reasonable criteria to be used in the exercise of its discretionary power, and that all of the violations mentioned therein have a direct bearing on highway safety, and that a point system is in accordance with the legislative policy expressed in the above section.

Harbin contended that Section 46-172 fixed no standards and laid down no intelligible guide to which the Department must conform but left the right to revoke or suspend in the unrestricted and uncontrolled discretion of the Department, and that this rendered the section void as an unconstitutional delegation of the legislative power. In addition he questioned the reasonableness of some of the points, asserting that some were contrary to legislative enactments, and pointed out that the system permitted a suspension solely upon warnings issued.

In reaching a decision the court said that it was unnecessary to go beyond the constitutional issue of whether the power granted in Section 46-172 was unconstitutional on the grounds that suspensions and revocations are left to the absolute, unregulated, and undefined discretion of the Department.

"It is accepted," the Court stated, "that while the legislature cannot delegate its legislative authority it can authorize an administrative body to fill in the details by prescribing rules and regulations for the complete operation and enforcement of a law within its expressed general purpose. It is necessary, however, that the law declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative body must conform, with a proper regard for the public interest."

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Thus, the court held, when the authority of the State Highway Department to suspend or revoke a license for cause which it deems satisfactory is considered in the light of the above principle, such provisions must be held invalid as an unconstitutional delegation of legislative powers. It sets up no standards to guide the Department and contains no limitations. It is that which an act permits that determines the issue, not what action an administrative official may or may not take, and delegation of unrestricted discretion cannot be saved by any presumption that an officer will exercise sound judgment and good faith.[54]

Having concluded that Section 46-172 of the 1952 Code, the foundation stone for the establishment of the point system, was void as an unconstitutional delegation of legislative powers, it followed that the Department was "without authority" to establish a point system, and that such a system, therefore, was without force and effect. Left unsettled were the questions as to the "reasonableness" of the South Carolina system, and the question of whether suspensions based on "warnings" wholly or in part would be violative of the "due process" requirements of the federal constitution.

A point system was created in Kentucky on December 20, 1956, by a series of three administrative regulations.[55] In order,

54. The court, by way of dicta, acknowledged that a license to drive is a privilege and not a property right but stated that such privilege could not be taken away arbitrarily or capriciously.

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PUBLIC SAFETY
DRIVER IMPROVEMENT

PSfty-DI-1
Establishment of Point System for Driver Improvement
Relates to KRS 186.570 (d)
Pursuant to the Authority of KRS 186.400.

To assist the Department of Public Safety in making a determination that a person is an habitually reckless or negligent driver of a motor vehicle for the purpose of denying, suspending, or revoking that person's license in accordance with KRS 186.570, a schedule of penalty points established by administrative regulations shall govern. Such schedule shall assign point value points for the different classifications of traffic violations and shall be assessed according to such schedule for all drivers. Information concerning convictions of traffic violations may be secured from any official source or records available to public or departmental inspection. Complete records of point system assessments shall be maintained in the Department of Public Safety.

these regulations (1) established a point system for driver improvement, (2) set out a schedule of points, and (3) provided that upon an accumulation of from 6 to 9 points within any three year period, a motorist was to be given a warning; for an accumulation of 12 points within a three year period, a mandatory six months suspension. Under this system one Beard's license was suspended for a period of six months. In reaching a decision as to the suspension of Beard's license the Department considered only one violation occurring following the adoption

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Filed, 20 Dec. 1956
Effective, (Emergency) 20 Dec. 1956.

PSfty-DI-2
Schedule of Points for Driver Improvement
Relates to KRS 186.570 (d)
Pursuant to Authority of KRS 186.400

The schedule by which points will be assessed for convictions of traffic violations is as follows:

Misrepresenting or falsifying application	12
Racing	6
Reckless Driving	4
Passing on curve or on hill (no passing zone) or passing school bus loading or unloading children	4
Violation contributing to accident	4
Exceeding speed limits	3
Other hazardous moving violations	3

Filed 20 Dec. 1956
Effective, (Emergency) 20 Dec. 1956.

PSfty-DI-3
Enforcement of the Point System For Convictions of Traffic Violations
Relates to KRS 186.570 (d)
Pursuant to Authority of KRS 186.400

(1) On the accumulation of six to nine points against any one driver within a three year period, the driver shall be apvised and cautioned regarding his point status and such other matters as the Commissioner of Public Safety deems necessary.

(2) On the accumulation of twelve scheduled points against any one driver within a three year period, it is mandatory that the Commissioner of Public Safety suspend the operator's license for a period of six months.

(3) Periods of suspension resulting from additional accumulation of points shall be governed by provisions of KRS 186.560.

Filed, 20 Dec. 1956
Effective, (Emergency) 20 Dec. 1956.

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f the point system. The other violations, for which points were ssigned, occurred prior to the adoption of a point system, but all within a three year period.

In seeking a return of his license Beard contended (1) that KRS 186.570[56] upon which the point system regulations were based, was an unconstitutional delegation of legislative power without any criteria or standards for an administrative agency to follow; (2) that the point system, as applied to him in the suspension of his license violated the due process provisions of the Fourteenth Amendment of the Constitution of the United States; and (3) that the action in suspending his license based on violations occurring prior to the effective date of the administrative regulations establishing the point system contravened Article I, Section 10, of the Constitution of the United States, Section 19 of the Constitution of the State of Kentucky, and KRS 446.080, which prohibit *ex post facto* laws and retroactive application of statutes.

In upholding the Kentucky point system, the Kentucky Court of Appeals rejected the contention that KRS 186.570 was unconstitutional as a delegation of legislative powers without providing any criteria or standards and held that the point system was constitutionally sound because it believed that the administration of traffic rules could be lawfully delegated to administrative officials.

In holding that there was no violation of due process in the suspension of Beard's license under the point system the court said that it was too late to contend that one had a natural right to operate a motor vehicle because it is now a privilege granted by a license of the state, subject to reasonable regulation by the

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56. KRS 186.570.—Discretionary suspension or denial of license; surrender of certificates. (1) The Department or its agents designated in writing for that purpose may deny any person a license or may suspend the license of any person, or, in the case of a non-resident, withdraw the privilege of operating a motor vehicle in this state, with or without a hearing, and with or without receiving a record of conviction of that person, whenever the department has reason to believe that:

(d) that person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.

KRS 186.400.—Duties of Departments of Revenues and Public Saf administration of laws. (1) . . . The Department of Public Safety may prescribe regulations for the enforcement of KRS 186.400 to 186.640, . . .

state in the exercise of its police powers, and when the conditions imposed by the license are violated, the suspension of the privilege to operate a motor vehicle is not a denial of "due process."

Likewise the court gave short shrift to Beard's claim that the regulation had been applied retroactively by the Department in suspending his license. This claim, the court said, evaporates when the provisions of KRS 186.570 are applied to the case. the statute enacted in 1936, authorized the Department to suspend summarily the license of any person whenever the Department has "reason to believe" the person in question "is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws." Beard's license was suspended under this statute upon a determination by the Department that he was "an habitually reckless driver." The mere fact that the Department used the point system in making this determination did not make the application of the regulation retroactive as to Beard.

It is important to note that in both the South Carolina and the Kentucky cases the initial question confronting the court was "did the Department or Agency have any legal authority to promulgate a point system?" In the South Carolina case this was answered in the negative and the court did not progress to a consideration of any further questions. In the Kentucky case the Court held that there was sufficient statutory authority to support the establishment of a point system and proceeded to uphold the reasonableness of the point system and to rule that under the fact situation presented, there was no *ex post facto* application of the law.

CONCLUSIONS

In the field of legal precedents there is a danger in attempting to draw specific conclusions from generalities in the law and no attempt is here made to do so. Rather, some broad generalizations will be attempted from the application of specific principles of law. Such generalizations may or may not be applicable in a given jurisdiction. In fact, their application may hinge upon subtle fact variations and upon the skill or lack of skill with which a test case is prosecuted and defended. Almost certainly their application will depend upon the judicial climate. Whether or not such generalities may be valid may depend in some meas-

ure on the community of thought within a jurisdiction. In the final analysis, legal questions arising out of the establishment and application of a point system, like other legal questions, can only be answered by a competent court, and then the answer may not be final, for, powerful as the doctrine of *Stare Decisis*[57] may be, a change in personnel on the court, militant public thought, or changed conditions may result in a reversal of a prior decision by the same court. Thus the best that can be done is to draw from available decisions and conjecture as to what the courts of a given state, using accepted measuring standards and principles, will conclude when presented with a given factual situation. It is quite impossible to gauge adequately the imponderable intangibles such as factual differences, skill and persistence of an advocate, judicial climate, and force of community thought. Such generalities should, however, prove efficacious in acquainting Motor Vehicle Administrators with possible pitfalls in establishing a point system and in providing a measuring rod whereby existing systems may be gauged.

Specific principles of law against which our generalizations are drawn include:

(1) Operation of a motor vehicle upon the highways, including the licensing of drivers, is a proper subject for regulation and control by the legislature in the exercise of its police powers.

(2) Regulations under the police power must have some "reasonable" relationship to the object sought to be accomplished.

(3) The legislature, in the exercise of its police powers is limited by both the "equal protection of the laws" and the "due process" clauses of the federal constitution and by similar provisions of state constitutions.

(4) The federal constitution prohibits a state from passing any *ex post facto* laws.

(5) The legislative power is vested in the legislature and any attempt to delegate legislative power without standards for

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57. Policy of courts to stand by precedent and not to disturb a settled point. *Neff v. George*, 364 Ill. 306, 4 N.E. 2d 388 (1936); Doctrine that when a court has once laid down a principle of law as applicable to a certain state of facts it will adhere to it and apply it to all future cases where facts are substantially identical, *Moore v. City of Albany*, 98 N. Y. 396 (1885).

guidance to a non-legislative body is void as an unconstitutional delegation of legislative power.

(6) There is a presumption that statutes are valid.

Measuring now, the factual situations presented in both the South Carolina and the Kentucky cases against the specific principles of law outlined above, the following generalities may be expressed:

(1) A legislature, in the exercise of its police powers, may regulate the operation of motor vehicles through licensing procedures and prescribe through statute the manner in which a license to drive may be granted, refused, or taken away. This being true, no serious legal obstacles stand in the way of the creation of a point system by statute. Such a system would be subject to the same legal rules and regulations as other statutory license regulations.

(2) Subject to the rule that the legislature must declare what the law shall be, although it may delegate to a non-legislative body the authority to promulgate rules and regulations for the administration of the law, a legislature may properly authorize an administrative agency to promulgate a point system for license suspensions together with a schedule of points.

(3) Discretionary point systems will stand or fail depending upon the foundation statutes upon which they are grounded. Thus a point system which is in itself reasonable and provides full protection under the "due process" and "equal protection" provisions of the Fourteenth Amendment may be voided because of the invalidity of its foundation statutes.

(4) Where the foundation statutes provide no standards or guides they will probably be voided as an unconstitutional delegation of legislative powers to a non-legislative body. Where, however, there are any standards or guides, however rudimentary, the probabilities are that they will be sustained.

(5) Once the validity of a foundation statute has been determined, the validity of a point system is subject to the same criteria as to reasonableness, et cetera, as statutory point systems and other license regulatory legislation.

(6) Application of a point system to violations committed prior to the adoption of the system will not be held to be an *ex post facto* application of the law unless the violations occurred prior to the adoption of the statute or statutes on which a point system is founded.

(7) Whenever a Department has authority to suspend, as for "habitually reckless and negligent driving," it probably has the authority to use a system of points in reaching a determination as to whether a particular driver was in fact "habitually reckless and negligent." Perhaps the most significant language contained in either the South Carolina or the Kentucky cases was the language of the Kentucky court to the effect that the foundation statute being valid, it made no difference that the Department used a system of points in reaching its determination that Beard was an habitually reckless driver.

RECOMMENDATIONS

It is not within the province of the legal study of point systems to recommend one method of establishing a point system over any other method, since, in the opinion of this writer, that constitutes a question of policy only. Assuming however, *arguendo*, that it is desired to establish a point system, and that such a system can be established in the manner in which the appropriate administrative agency may choose, certain legal factors should be re-iterated. Namely:

(1) A point system, including schedule of points, written into the statutes through legislative enactments, presents fewer legal questions than systems authorized by statute or permitted by statute. Such a system, however, results in a loss of flexibility.

(2) From a legal standpoint, statutory authority for establishment of a point system, presents fewer legal difficulties than establishment of such a system based upon "broad discretionary" powers. Such authority is subject, however, to the general rule of law that the legislature must provide sufficient standards to govern and limit the department in its establishment of such system.

(3) Point systems based upon broad discretionary powers must meet a twofold test in addition to the other questions raised by such point systems. First, are the foundation statutes themselves valid, and second, do they in fact authorize the establishment of a point system?

Whenever a decision has been made that it is desirable to establish a point system based upon the broad discretionary powers of the appropriate administrative agency, it is recommended that the statutes that are to be relied upon to support the establishment of such a system be measured against the

general rules of law herein presented, and if there is reasonable doubt that such statutes will support the establishment of such a system, that such supporting statutes first be strengthened.

While no attempt can be made to specify all the possible statutory words that will presumably withstand an attack on constitutional grounds, it has been demonstrated that the usual "habitual violator" and "habitually reckless and negligent operator" statutes will probably withstand an attack on the grounds that they are invalid as an unconstitutional delegation of legislative powers. It is suggested that a statute which authorizes the department to suspend the license of any person who "has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highway,"[58] would be sufficient in any jurisdiction to support the establishment of a point system.

58. *Driver Improvement Through Licensing Procedures*, American Association of Motor Vehicle Administrators (1956) p. 22.

SB-310

TO: House Judiciary

SUBJECT: CSSB 310
Venue Bill

HISTORY

In December 1970 a number of legislators, native leaders, members of the judiciary, State Police, Health, Education and Welfare officials, and officials of the Division of Corrections met at Mt. Alyeska near Anchorage, Alaska, to discuss criminal justice in the rural areas of Alaska. This became commonly known as the "Bush Justice Conference." One of the results of this conference was a recommendation that criminal trials in Alaska be held in areas other than the three or four major urban cities.

The First Session of the Seventh Alaska Legislature amended AS 22.10.030 and in effect decreed a change in the Criminal Rules, in that the place of trial for any crime committed in the state was to be in the Election District. Shortly thereafter the supreme court handed down a decision in Cloyd Alvarado v. State of Alaska (Exhibit A) in which they indicated that the law of Alaska required that a man accused of a crime in the State of Alaska should be tried by a jury of his peers, and should be tried in an area that would reasonably insure that the same ethnic group to which the accused belong would be represented in the jury selection.

As time passed it became readily apparent that as a practical matter this statute created many hardships because in vast areas of this great state there are absolutely no facilities available for holding criminal trials. In order to relieve this problem to a certain extent, the supreme court issued Supreme Court Order No. 136 (Exhibit B). Among other things in the Supreme Court Order, they directed the Administrative Director of Courts to investigate and report to the presiding superior or district court judge in the judicial district in which the trial was to be held, the availability of appropriate facilities in the area. It is to be pointed

~~only~~ OUT that the order could not and did not supersede the statute and that if a crime was committed in a rural district and there was no facility available, then the court was required to move to that area and attempt to set up some type of temporary quarters in which to hold the trial. This not only was a hardship on the court and jurors, but became a tremendous expense to the taxpayers of this state. Fortunately no lengthy trial has been required in a remote area as yet. However, the potential is always there.

CSSB 310

CSSB 310 would amend the present statute in two major areas. The present statute states that trials must be held in "election districts," this being the House Election Districts. The present bill would change this to a senate district, which would encompass a much larger area (see attached map). In addition to expanding this geographical area it states that if a crime is committed within the boundaries of a borough, then the location shall be at a place within the borough that will best serve as a place for trial. This will also take into consideration some problem areas such as the city of Anchorage, where there are four senate districts, and in areas adjacent to Fairbanks which is a separate senate district. The second point is that the Administrative Director of Courts may move a trial to the next closest senate district if he feels that there are absolutely no reasonably suitable facilities within a senate district.

The Senate Judiciary Committee has had under consideration CSSB 310 since the beginning of the session and has contacted members of the judiciary, the Administrative Director of Courts, members of this body representing the rural areas of our state, and the committee feels that this bill will preserve the spirit of the Bush Justice Conference, the decision of Alvarado v. State, and the feelings and desires of the citizens of rural Alaska, but yet be flexible enough to take away the financial burden imposed by the former statute.

SB. 310

JAN 19 1972

Superior Court

State of Alaska

SECOND JUDICIAL DISTRICT

FEDERAL BUILDING

NOME, ALASKA

99762

WILLIAM H. SANDERS, PRESIDING JUDGE

January 17, 1972

The Honorable Robert C. Erwin
Associate Justice of the Supreme Court
Alaska Court System
941 Fourth Avenue
Anchorage, Alaska 99501

Re: Reapportionment and Judicial Districts

Dear Bob:

It is my understanding that you are the court system's liaison with the legislature and for that reason am sending you this request to have the legislature straighten out our judicial district. We have criminal law problems in this area with present boundaries.

Please note that AS 22.10.010 is in part as follows:

> "There shall be one superior court for the state. The court shall consist of four districts bounded as follows: . . . Second District: the area within election district numbered 21 to 24, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959."

Would suggest that if the present proposed reapportionment is approved that this particular portion of the statute be amended as follows:

> "There shall be one superior court for the state. The court shall consist of four districts bounded as follows: . . . Second District: the area within the election districts numbered 18, 19 and 20."

You will note that the statute was passed setting up these districts March 19, 1959. No amendment was made to this statute

after reapportionment in 1962.

The legislature in 1959 followed election district in establishing judicial districts. There are sound reasons for following this procedure. At the present time a Superior Court Judge or District Judge running for re-election would have to follow the old election district boundaries set in 1959. This would create problems with the election supervisors in distributing the judicial ballots and tallying the judicial vote.

The constitutional provision that allows the legislature to establish judicial districts is as follows: (Art. IV, §1)

> "The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law."

It may be that you will want to amend AS 22.10.010 to cover all four judicial districts.

Sincerely,

Bill

William H. Sanders

WHS:dj
cc: Honorable Jay A. Rabinowitz
Associate Justice

Robert N. Reeves
Administrative Director of Courts

SB-377

whether such purchaser is an underwriter or dealer in securities, and, if not, whether the purchase of such a block of securities for investment is consistent with its general operations; and (3) the length of time elapsing between the acquisition of the securities by the initial purchaser and the date of their proposed resale.

Of course, if the securities in question were in fact purchased by the initial purchaser for investment rather than for resale, dealers' sales thereof to the public would not necessitate registration under the Securities Act.

In conclusion, I feel that I should point out that even though a dealer is satisfied that a particular block of unregistered securities was bought by an initial purchaser for investment, he nevertheless takes the risk that, if his determination is incorrect, sales by him of such securities will be in violation of the registration requirements of the Act.

[Release No. 33-603, December 16, 1935, 11 F. R. 10955.]

[¶ 2755] Public Offerings of Investment Contracts Providing for the Acquisition, Sale or Servicing of Mortgages or Deeds of Trust

This release refers to the Act as in effect prior to the 1964 amendments. CCH.

Release Nos. 33-3892 and 34-5633. January 31, 1958, 23 F. R. 840.

Reg. § 231.3892 (§ 241.5633). Statement of the Commission regarding public offerings of investment contracts providing for the acquisition, sale or servicing of mortgages or deeds of trust.

Questions are presented to the Securities and Exchange Commission from time to time as to the application of the federal securities laws to offerings of whole or fractional interest in mortgages or deeds of trust under arrangements which provide for a variety of services to the investor. In the opinion of the Commission such an arrangement frequently constitutes an "investment contract", which is a "security" within the meaning of the federal securities laws. The public offering and sale of these investment contracts may invoke the registration provisions of the Securities Act of 1933 and other provisions of the federal securities laws. It should be emphasized, in this connection, that exemptions from registration provided by section 4 (1) of the Securities Act of 1933 and Regulation A-R* thereunder, usually relied upon for the underlying mortgage and deed of trust notes, would not be available for a public offering of the investment contracts. Recently the Commission has obtained injunctions against sellers who failed to register such investment contracts offered through nationwide advertising.[1]

[¶ 2756] [Services and Other Attributes of Arrangement]

Among the more common services and other attributes of the arrangements, offered in relation to the mortgages or deeds of trust, which have come to the attention of the Commission and which in the opinion of the Commission may give rise to the creation of "investment contracts" within the meaning of the securities laws are:

(a) Complete investigation and placing service.

(b) Servicing collection, payments, foreclosure, etc.

[1] See *SEC v. Mortgage Clubs, Inc.*, D. Mass. Civ. Act. No. 57-385-N, Litigation Release No. 1106 and *SEC v. Backers Discount and Finance, Inc.*, D. N. J. C. A. No. 14-58, Litigation Release No. 1200.

* [Regulation A-R was rescinded December 8, 1960 (¶ 70,732). CCH.]

In *In re Natural Resources Corporation*, 8 S. E. C. 635, 637, the Commission stated that "* * * transactions which in form appear to involve nothing more than the sale of real estate, chattels, or services have been held to be investment contracts where in substance they involve the laying out of money by the investor on the assumption and expectation that the investment will return a profit without any active effort on his part, but rather as the result of the efforts of someone else."

It should also be noted that persons engaged in the business of buying and selling mortgage or trust notes would ordinarily be brokers or dealers, or both, within the meaning of the Securities Exchange Act of 1934, and absent an exemption would be required to be registered as such with the Commission under the provisions of section 15 of the Act. Rule 15a-1 would not provide an exemption for such a broker or dealer who is offering investment contracts of the type referred to above. Moreover, such a broker or dealer usually would be subject to the Commission's Rule 15c3-1 whether or not he is registered. A broker or dealer subject to this rule could not use the mails or federal instrumentalities to effect a transaction in a non-exempt security otherwise than on a national securities exchange if his "aggregate indebtedness" exceeds 20 times his "net capital" as those terms are defined in the rule.

In addition to all of the foregoing, it should be emphasized that the antifraud provisions of the Acts and regulations administered by the Commission (including specifically section 17 (a) of the Securities Act of 1933 and Rules 10b-5 and 15c1-2 under the Securities Exchange Act of 1934) would apply to advertisements, literature, and any other statements and representations made in connection with the offer or sale of any of the securities referred to herein.

Persons engaging in this type of business should consult with the nearest regional office of the Commission or with the headquarters office in Washington, D. C.

NOTE: The text of § 241.5633 is identical with that appearing in § 231.3892.

This release becomes effective January 31, 1958.

[Release No. 33-3892, January 31, 1958, 23 F. R. 840.]

[¶ 2765] Real Estate Investment Trust

This release refers to the Act as in effect prior to the 1964 amendments. CCH.

Release Nos. 33-4298, 34-6419, and IC-3140. November 18, 1960, 25 F. R. 12177.

Reg. § 231.4298 (§§ 241.6419 and 271.3140). Statement of the Commission as to the applicability of the Federal securities laws to real estate investment trusts.

The Securities and Exchange Commission has received a number of inquiries as to the applicability of the Federal securities laws to real estate investment trusts as defined in a recent amendment to the Internal Revenue Code (Public Law 86-779, September 14, 1960). This amendment provides substantially the same tax treatment for qualified trusts which are substantially limited to investments in real estate and real estate mortgages as is provided for "regulated investment companies", but it does not amend any of the statutes administered by this Commission. A real estate investment trust may be subject to the provisions of the Federal securities laws, depending upon the circumstances involved in offering its securities for sale, the nature of such securities, and the character of the trust's investments.

The amendment, among other things, requires that, in order to qualify for the special tax treatment provided, the trust's securities must be bene-

MISCELLANOUS

Supreme Court
State of Alaska

CHIEF JUSTICE
GEORGE F. BONEY

ASSOCIATE JUSTICES
JOHN H. DIMOND
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

B U L L E T I N

March 24, 1971

TO: Members, Alaska Supreme Court
Members, Alaska Superior and District Courts
Members, Alaska State Legislature
Members, Alaska Judicial Council
Members, Alaska Court Administration Staff
President, Alaska Bar Association
President, Anchorage Bar Association

FROM: George F. Boney, Chief Justice
Alaska Supreme Court

RE: National Conference on the Judiciary

For your information I am enclosing copies of the classic addresses made by President Nixon and Chief Justice Burger at the National Conference on the Judiciary at Williamsburg, Virginia on March 11 and 12, 1971.

George F. Boney

Enclosures

FOR RELEASE ON DELIVERY
THURSDAY, MARCH 11, 1971

MARCH 11, 1971

Office of the White House Press Secretary
(Williamsburg, Virginia)

THE WHITE HOUSE

TEXT OF AN ADDRESS BY THE PRESIDENT
NATIONAL CONFERENCE ON THE JUDICIARY
WILLIAMSBURG, VIRGINIA

As one who has practiced law; as one who deeply believes in the rule of law; and as one who now holds the responsibility for faithful execution of the laws of the United States, I am honored to give the opening address to this National Conference on the Judiciary.

It is fitting that you come together here in Williamsburg. Like this place, your meeting is historic. Never in the history of this Nation has there been such a gathering of distinguished men of the judicial systems of our States. I salute you all for your willingness to come to grips with the need for court reform and modernization. And I would like to salute especially the man who has been the driving force for court reform; a man whose zeal for reshaping the judicial system to the need of the times carries on the great tradition begun by Chief Justice John Marshall -- the Chief Justice of the United States, Warren Burger.

I recall that when I took my bar examination in New York City a few years ago, I dwelt at some length on the wisdom of the separation of powers. My presence here today indicates in no way an erosion of that concept; as a matter of fact, I have come under precedents established by George Washington and John Adams who both spoke out for the need for judicial reform. And President Lincoln, in his first annual message to the Congress, made an observation that is strikingly current -- that, in his words, "the country generally has outgrown our present judiciary system."

There is also a Lincoln story -- an authentic one -- that illustrates the relationship of the judicial and executive branches. When Confederate forces were advancing on Washington, President Lincoln went to observe the battle at Fort Stevens. It was his only exposure to actual gunfire during the Civil War -- and he climbed up on a parapet, against the advice of the military commander, to see what was going on. When, not five feet from the President, a man was felled by a bullet, a young Union captain shouted at the President: "Get down, you fool!" Lincoln climbed down and said gratefully to the captain: "I'm glad you know how to talk to a civilian."

The name of the young man who shouted "Get down, you fool!" was Oliver Wendell Holmes, who went on to make history in the law. From that day to this, there has never been a more honest and heartfelt remark made to the head of the executive branch by a member of the judicial branch -- though a lot of judges over the years must have felt the same way.

Let me address you today in more temperate words, but in the same spirit of candor.

The purpose of this conference is "to improve the process of justice." We all know how urgent the need is for that improvement at both the State

(MORE)

and Federal level. Interminable delays in civil cases; unconscionable delays in criminal cases; inconsistent and unfair bail impositions; a steadily growing backlog of work that threatens to make the delays worse tomorrow than they are today -- all this concerns everyone who wants to see justice done.

Overcrowded penal institutions; unremitting pressure on judges and prosecutors to process cases by plea bargaining, without the safeguards recently set forth by the American Bar Association; the clogging of court calendars with inappropriate or relatively unimportant matters -- all this sends everyone in the system of justice home at night feeling as if they have been trying to brush back a flood with a broom.

Many hardworking, dedicated judges, lawyers, penologists and law enforcement officials are coming to this conclusion: A system of criminal justice that can guarantee neither a speedy trial nor a safe community cannot excuse its failure by pointing to an elaborate system of safeguards for the accused. Justice dictates not only that the innocent man go free, but that the guilty be punished for his crimes.

When the average citizen comes into court as a party or a witness, and he sees that court bogged down and unable to function effectively, he wonders how this was permitted to happen. Who is to blame? Members of the bench and the bar are not alone responsible for the congestion of justice.

The Nation has turned increasingly to the courts to cure deep-seated ills of our society -- and the courts have responded; as a result, they have burdens unknown to the legal system a generation ago. In addition, the courts had to bear the brunt of the rise in crime -- almost 150% higher in one decade, an explosion unparalleled in our history.

And now we see the courts being turned to, as they should be, to enter still more fields -- from offenses against the environment to new facets of consumer protection and a fresh concern for small claimants. We know, too, that the court system has added to its own workload by enlarging the rights of the accused, providing more counsel in order to protect basic liberties.

Our courts are overloaded for the best of reasons: because our society found the courts willing -- and partially able -- to assume the burden of its gravest problems. Throughout a tumultuous generation, our system of justice has helped America improve herself; there is an urgent need now for America to help the courts improve our system of justice.

But if we limit ourselves to calling for more judges, more police, more lawyers operating in the same system, we will produce more backlogs, more delays, more litigation, more jails and more criminals. "More of the same" is not the answer. What is needed now is genuine reform -- the kind of change that requires imagination and daring, that demands a focus on ultimate goals.

The ultimate goal of changing the process of justice is not to put more people in jail or merely to provide a faster flow of litigation -- it is to resolve conflict speedily but fairly, to reverse the trend toward crime and violence, to reinstill a respect for law in all our people.

(MORE)

The watchword of my own administration has been reform. As we have undertaken it in many fields, this is what we have found. "Reform" as an abstraction is something that everybody is for, but reform as a specific is something that a lot of people are against.

A good example of this can be found in the law: Everyone is for a "speedy trial" as a constitutional principle, but there is a good deal of resistance to a speedy trial in practice.

The founders of this nation wrote these words into the Bill of Rights: "the accused shall enjoy the right to a speedy and public trial." The word "speedy" was nowhere modified or watered down. We have to assume they meant exactly what they said -- a speedy trial.

It is not an impossible goal. In criminal cases in Great Britain today, most accused persons are brought to trial within 60 days after arrest. Most appeals are decided within three months after they are filed.

But here in the United States, this is what we see: In case after case, the delay between arrest and trial is far too long. In New York and Philadelphia the delay is over five months; in the State of Ohio, over six months; in Chicago, an accused man waits six to nine months before his case comes up.

In case after case, the appeal process is misused -- to obstruct rather than advance the cause of justice. Throughout the State systems, the average time it takes to process an appeal is estimated to be as long as 18 months. The greater the delay in commencing a trial, or retrial resulting from an appeal, the greater the likelihood that witnesses will be unavailable and other evidence difficult to preserve and present. This means the failure of the process of justice.

The law's delay creates bail problems, as well as overcrowded jails; it forces judges to accept pleas of guilty to lesser offenses just to process the caseload -- to "give away the courthouse for the sake of the calendar." Without proper safeguards, this can turn a court of justice into a mill of injustice.

In his perceptive message on "The State of the Federal Judiciary," Chief Justice Burger makes the point that speedier trials would be a deterrent to crime. I am certain that this holds true in the courts of all jurisdictions.

Justice delayed is not only justice denied -- it is also justice circumvented, justice mocked, and the system of justice undermined.

What can be done to break the logjam of justice today, to ensure the right to a speedy trial -- and to enhance respect for law? We have to find ways to clear the courts of the endless stream of "victimless crimes" that get in the way of serious consideration of serious crimes. There are more important matters for highly skilled judges and prosecutors than minor traffic offenses, loitering and drunkeness.

We should open our eyes -- as the medical profession is doing -- to the use of paraprofessionals in the law. Working under the supervision of trained attorneys, "parajudges" could deal with many of the essentially administrative matters of the law, freeing the judge to do what only he can do: to judge. The development of the new office of magistrates in the Federal System is a step in the right direction. In addition, we should take advantage of many technical advances, such as electronic information retrieval, to expedite the result in both new and traditional areas of the law.

But new efficiencies alone, important as they are, are not enough to reinstill respect in our system of justice. A courtroom must be a place where a fair balance must be struck between the rights of society and the rights of the individual.

We all know how the drama of a courtroom often lends itself to exploitation, and, whether it is deliberate or inadvertent, such exploitation is something we must all be alert to prevent. All too often, the right of the accused to a fair trial is eroded by prejudicial publicity. We must never forget that a primary purpose underlying the defendant's right to a speedy and public trial is to prevent star-chamber proceedings, and not to put on an exciting show or to satisfy public curiosity at the expense of the defendant.

In this regard, I strongly agree with the Chief Justice's view that the filming of judicial proceedings, or the introduction of live television to the courtroom, would be a mistake. The solemn business of justice cannot be subject to the command of "lights, camera, action."

The white light of publicity can be a cruel glare, often damaging to the innocent bystander thrust into it, and doubly damaging to the innocent victims of violence. Here again a balance must be struck: The right of a free press must be weighed carefully against an individual's right to privacy.

Sometimes, however, the shoe is on the other foot: Society must be protected from the exploitation of the courts by publicity-seekers. Neither the rights of society nor the rights of the individual are being protected when a court tolerates anyone's abuse of the judicial process. When a court becomes a stage, or the center ring of a circus, it ceases to be a court. The vast majority of Americans are grateful to those judges who insist on order in their courts and who will not be bullied or stampeded by those who hold in contempt all this nation's judicial system stands for.

The reasons for safeguarding the dignity of the courtroom and clearing away the underbrush that delays the process of justice go far beyond questions of taste and tradition. They go to the central issue confronting American justice today.

How can we answer the need for more, and more effective, access to the courts for the resolution of large and small controversies, and the protection of individual and community interests? The right to representation by counsel and the prompt disposition of cases -- advocacy and adjudication -- are fundamental rights that must be assured to all our citizens.

In a society that cherishes change; in a society that enshrines diversity in its constitution; in a system of justice that pits one adversary against another to find the truth -- there will always be conflict. Taken to the street, conflict is a destructive force; taken to the courts, conflict can be a creative force.

What can be done to make certain that civil conflict is resolved in the peaceful arena of the courtroom, and criminal charges lead to justice for both the accused and the community? The charge to all of us is clear.

We must make it possible for judges to spend more time judging, by giving them professional help for administrative tasks. We must change the criminal court system, and provide the manpower -- in terms of court staffs, prosecutors, and defense counsel -- to bring about speedier trials and appeals.

(MORE)

We must ensure the fundamental civil right of every American -- the right to be secure in his home and on the streets. We must make it possible for the civil litigant to get a hearing on his case in the same year he files it.

We must make it possible for each community to train its police to carry out their duties, using the most modern methods of detection and crime prevention. We must make it possible for the convicted criminal to receive constructive training while in confinement, instead of what he receives now -- an advanced course in crime.

The time has come to repudiate once and for all the idea that prisons are warehouses for human rubbish; our correctional systems must be changed to make them places that will correct and educate. And, of special concern to this conference, we must strengthen the State court systems to enable them to fulfill their historic role as the tribunals of justice nearest and most responsive to the people.

The Federal Government has been treating the process of justice as a matter of the highest priority. In the budget for the coming year, the Law Enforcement Assistance Administration will be enabled to vigorously expand its aid to State and local governments. Close to one half billion dollars a year will now go to strengthen local efforts to reform court procedures, police methods and correctional action and other related needs. In my new special revenue sharing proposal, law enforcement is an area that receives increased attention and greater funding -- in a way that permits States and localities to determine their own priorities.

The District of Columbia, the only American city under direct Federal supervision, now has legislation and funding which reorganizes its court system, provides enough judges to bring accused persons to trial promptly, and protects the public against habitual offenders. We hope that this new reform legislation may serve as an example to other communities throughout the Nation.

And today I am endorsing the concept of a suggestion that I understand Chief Justice Burger will make to you tomorrow: the establishment of a National Center for State Courts.

This will make it possible for State courts to conduct research into problems of procedure, administration and training for State and local judges and their administrative personnel; it could serve as a clearinghouse for the exchange of information about State court problems and reforms. A Federal Judicial Center along these lines already exists for the Federal court system and has proven its worth; the time is overdue for State courts to have such a facility available. I will look to the conferees here in Williamsburg to assist in making recommendations as to how best to create such a center, and what will be needed for its initial funding.

The executive branch will continue to help in every way, but the primary impetus for reforming and improving the judicial process should come from within the system itself. Your presence here is evidence of your deep concern; my presence here bears witness to the concern of all the American people regardless of party, occupation, race or economic condition, for the overhaul of a system of justice that has been neglected too long.

I began my remarks by referring to an episode involving Justice Oliver Wendell Holmes. There is another remark of Holmes not very well known, that reveals an insight it would be well for us to have today.

(MORE)

Judge Learned Hand told of the day that he drove Justice Holmes to a Supreme Court session in a horsedrawn carriage. As he dropped the Justice off in front of the Capitol, Learned Hand said, "Well, sir, goodbye. Do justice!" Mr. Justice Holmes turned and said, most severely, "That is not my job. My job is to play the game according to the rules."

The point of that remark, and the reason that Learned Hand repeated it after he had reached the pinnacle of respect in our profession, was this: Every judge, every attorney, every policeman wants to "do justice." But the only way that can be accomplished, the only way justice can truly be done in any society, is for each member of that society to subject himself to the rule of law -- neither to set himself above the law in the name of justice, nor to set himself outside the law in the name of justice.

We shall become a genuinely just society only by "playing the game according to the rules," and when the rules become outdated or are shown to be unfair, by lawfully and peaceably changing those rules.

The genius of our system, the life force of the American Way, is our ability to hold fast to the rules that we know to be right and to change the rules that we see to be wrong. In that regard, we would all do well to remember our constitutional roles: for the legislatures, to set forth the rules; for the judiciary, to interpret them; for the executive, to carry them out.

The American Revolution did not end two centuries ago; it is a living process. It must constantly be reexamined and reformed. At one and the same time, it is as unchanging as the spirit of laws and as changing as the needs of our people.

We live in a time when headlines are made by those few who want to tear down our institutions, by those who say they defy the law. But we also live in a time when history is made by those who are willing to reform and rebuild our institutions -- and that can only be accomplished by those who respect the law.

# # #

Remarks of Warren E. Burger
Chief Justice of the United States
National Conference on the Judiciary
Williamsburg, Virginia
March 12, 1971 - 9:00 a.m.

FOR RELEASE
ON DELIVERY

DEFERRED MAINTENANCE

This Conference is unique in one respect that we should recognize at the outset for it brings together a cross-section of state and federal judges and of state and federal law enforcement authorities, and others seeking to avert an impending crises in the courts. The only counterpart to this Conference in the past century was the Attorney General's Conference on Court Congestion and Delay convened by Attorney General Herbert Brownell more than fifteen years ago. Fifty years before Attorney General Brownell called his Conference, Roscoe Pound had warned the legal profession in the strongest terms that we were on the threshold of a crisis. Periodically we respond and experience some relief but we are soon overwhelmed by a new tide of problems.

Today the American system of criminal justice in every phase -- the police function, the prosecution and defense, the courts and the correctional machinery -- is suffering from a severe case of deferred maintenance. By and large, this is true at the state, local and federal levels. The failure of our machinery is now a matter of common knowledge, fully documented by innumerable studies and surveys.

As a consequence of this deferred maintenance we see

First, that the perpetrators of most criminal acts are not detected, arrested and brought to trial;

Second, those who are apprehended, arrested and charged are not tried promptly because we allow unconscionable delays that pervert both the right of the defendant and the public to a speedy trial of every criminal charge; and

Third, the convicted persons are not punished promptly after conviction because of delay in the appellate process. Finally, even after the end of litigation, those who are sentenced to confinement are not corrected or rehabilitated, and the majority of them return to commit new crimes. The primary responsibility of judges, of course, is for the operation of the judicial

machinery but this does not mean we can ignore the police function or the shortcomings of the correctional systems.

At each of these three stages -- the enforcement, the trial, the correction -- the deferred maintenance became apparent when the machinery was forced to carry too heavy a load. This is the thing that happens to any machinery whether it is an industrial plant, an automobile or a dishwasher. It can be no comfort to us that this deferred maintenance crisis is shared by others; by cities and in housing, in the field of medical care, in environmental protection, and many other fields. All of these problems are important, but the administration of justice is the adhesive -- the very glue -- that keeps the parts of an organized society from flying apart. Man can tolerate many shortcomings of his existence, but history teaches us that great societies have foundered for want of an adequate system of justice, any by that I mean justice in its broadest sense.

I have said nothing of civil justice -- that is the resolution of cases between private citizens or between citizens and government. This unhappily is becoming the stepchild of the law as criminal justice once was. Most people with civil claims, including those in the middle economic echelons, who cannot afford the heavy costs of litigation and who cannot qualify for public or government-subsidized legal assistance, are forced to stand by in frustration, and often in want, while they watch the passage of time eat up the value of their case. The public has been quiet and patient, sensing on the one hand the need to improve the quality of criminal justice but also experiencing frustration at the inability to vindicate private claims and rights.

We are rapidly approaching the point where this quiet and patient segment of Americans will totally lose patience with the cumbersome system that makes people wait two, three, four or more years to dispose of an ordinary civil claim while they witness flagrant defiance of law by a growing number of law-breakers who jeopardize cities and towns and life and property of law-abiding people, and monopolize the courts in the process. The

courts must be enabled to take care of both civil and criminal litigants without prejudice or neglect of either.

THIS IS WHY WE ARE HERE TODAY.

The question is -- what will happen as a result of our being here? What will each of us do when we return to the daily tasks we have temporarily laid aside to gather at this Conference? Let me suggest some of the problem areas and then let me venture some thoughts on what we might try to do about them.

There are many areas which we should study and consider, and indeed, that we must consider, but if we try too much at once we may fail in all our endeavors. I am thinking, for example, of substantive problems which cry out for re-examination, including the handling of personal injury claims, which especially clog the state courts; the need to ask questions about other areas of jurisdiction, such as receivorships of insolvent debtors, the adoption of children, land-title registration in some states, and possibly even such things as divorce jurisdiction and child-custody matters. We need a comprehensive re-examination of the whole basis of jurisdiction in order to eliminate whenever possible all matters which may be better administered by others so as to restore the courts to their basic function of dealing with cases and controversies.

We can see in the development of common law institutions many examples of changing jurisdiction and evolution of new remedies. I suggest no specific changes but I trust it will not be regarded as subversive to suggest the need for study and thought on these problems, remembering that subjects once committed to the courts are not the province of the other governmental bodies. The common law tradition teaches that rights and remedies are never fixed or static but a continuing process of change. For example, working men once had either no rights at all or common law rights based on negligence when they were injured in their work. The deficiencies of the common law remedies inspired lawyers to find other and better ways of dealing with the claims of injured workmen and I think no one would seriously consider turning the clock back to the old ways. A large area of

regulatory activity was once imposed on courts but for the larger part of this century that has been vested in a wide array of administrative and regulatory bodies with limited judicial review.

All of us attending this Conference share and are the beneficiaries of the great common law tradition that undergirds American jurisprudence and virtually all aspects of our procedure, both state and federal. As lawyers and judges we can be proud of the great tradition of the common law and even have a pardonable pride in the improvements and developments that American lawyers and judges have added to it. We do not disparage or undermine the common law when we consider change. Indeed, change is the very essence -- the very heart -- of the common law concept that springs from England and has been followed in all English-speaking countries the world over.

PRIORITIES

The challenges to our systems of justice are colossal and immediate and we must assign priorities. I would begin by giving priority to methods and machinery, to procedure and techniques, to management and administration of judicial resources even over the much-needed reexamination of substantive legal institutions that are out of date. That reexamination is importan', but 't is inevitably a long range undertaking and it can wait.

I have said before, but I hope it will bear repeating, that with reference to methods and procedure we may be carrying continuity and tradition too far when we see that John Adams, Hamilton or Burr, Jefferson or Marshall, reincarnated, could step into any court today and after a minimal briefing on procedure and up-dating in certain areas of law, try a case with the best of today's lawyers. Those great eighteenth century lawyers would need no more than a hurried briefing and a Brooks' Bros. suit. They would not even need a hair cut, given the styles of our day.

This is not necessarily bad, and I propose nothing specific on how we should dhange our methods of resolving conflicts in the courtroom, but I do know this -- and so does anyone who has read legal history and read the newspapers in recent years - that John Adams, and his reincarnated col-

leagues at the bar, would be shocked and bewildered at some of the antics and spectacles witnessed today in the courtrooms of America. They would be as shocked and baffled as are a vast number of contemporary Americans and friends of America all over the world. They would not be able to understand why so many cases take weeks or months to try. No one could explain why the jury selection process, for example, should itself become a major piece of litigation consuming days or weeks. Few people can understand it and the public is beginning to ask some searching questions on the subject.

STATE-FEDERAL COOPERATION

I need not burden this well-informed audience on the subject of the tension and the strains existing between the state and federal courts in recent years. Because of the existence of those problems and the reasons underlying them I urged last August, at the ABA Convention in St. Louis, that the Chief Justice of each state take the initiative to create an informal ad hoc state-federal judicial council in each state. The purpose, of course, was to have these judges meet together informally to develop cooperation to reduce the tensions that have existed in recent years. I was pleasantly surprised, even astonished, at the speed with which the Chief Justices responded, for I am now informed that such Councils are in actual operation in 32 of the states. Many of these Councils have been created by formal order of the State Supreme Court. I am also informed that once the channels of communication were opened these state and federal judges found other areas of fruitful cooperation and exchange of ideas. I regard this development of such importance that I wish to express my appreciation to the Conference of State Chief Justices and to Chief Justice Calvert of Texas, its Chairman.

In urging the cooperation between the state and federal judges, and in urging the state judges to call upon the state bar associations and on the American Bar Association, I have no thought whatever that all state court systems or all judges be cast in one mold. Far from this, I have an abiding conviction that the strength of our entire system in this country and the

essence of true Federalism lies in diversity among the states. It will not impair this diversity, however, to work together to develop effective post-conviction remedies for example, or common standards of judicial administration, common standards of professional conduct for lawyers, and, indeed, for judges, or the improvement in the method of selection, the tenure, and compensation of judges.

The diversity that has existed in our system and the innovativeness of state judges accounts for many of the great improvements that the federal system has adopted from the states. One of the most crucial is in the developing area of using trained court administrators or executives in the administration of the courts. The states have been a whole generation ahead of the federal system in this matter. When we sought to create the Institute of Court Management in 1969 the first step was to call on state court administrators for guidance and advice.

We should never forget that under our federal system, the basic structure of the courts of this country contemplated that state courts would deal with local matters while federal courts would serve a limited and narrow function. I hope we will never become so bigoted as to think that state judges are any less devoted to the principles of the federal Constitution than other judges and lawyers.

STANDARDS OF ADMINISTRATION

I do not especially like pharases like "management of judicial resources," or "maximum utilization of judge power." They seem stilted to me as they do to most lawyers and judges. But these phrases are simply "shorthand" and if we accept them as such they become tolerable. The important thing is the concept underlying these "shorthand" terms. Every profession and every area of human activity has had to grapple with the hard realities behind the shorthand. The difference is judges and lawyers have lagged far behind the rest. I do not suggest that justice can ever become automated or that production line processes are adaptable to courts.

But we must acknowledge that the practice of the healing arts, for example, is surely a sensitive and delicate matter, perhaps as much so as the administration of justice. Yet the medical profession has responded and necessity has forced innovative changes that make it possible today for one physician or surgeon, depending on the individual, to do from three to ten or fifteen times what his counterpart could do even as recently as twenty or thirty years ago. And with this enormous increase in productivity, by and large we have in this country a better quality of medical care today than at any time in the history of mankind.

In terms of methods, machinery and equipment, the flow of papers -- and we know the business of courts depends on the flow of papers -- most courts have changed very little fundamentally in a hundred years or more. I know of no comprehensive surveys, but spot checks have shown that the ancient ledger type of record books, sixteen or eighteen inches wide, twenty-four or twenty-six inches high, and four inches thick are still used in a very large number of courts and these cumbersome books, hazardous to handle, still call for longhand entries concerning cases. I mention this only as one symptom of our tendency to cling to old ways. We know that banks, factories, department stores, hospitals and many government agencies have cast off anachronisms of this kind.

With relatively few exceptions, we still call jurors as in the past. We still herd them into a common room in numbers often double the real need because of obsolete concepts of arranging and managing their use. This is often complicated by the unregulated arbitrariness of a handful of judges, for example, who demand more jurors than they can possibly use to be allocated each day for their exclusive use. There is almost a total absence of even the most primitive techniques in predicting the need for jurors just as there is a large vacuum in the standards and procedures to coordinate the steps of bringing a case and all of its components -- the lawyers, witnesses, experts, jurors and court staff -- to the same place at the same time.

Happily, a very distinguished committee of the American Bar Association under the chairmanship of Judge Freedman of the United States Court of Appeals of the Third Circuit is now launching a comprehensive program of bringing up to date the minimum standards of judicial administration.

Independent of what we do in the courtroom itself, we need careful study to make sure that every case which reaches the courtroom stage is there only after every possibility of settlement has been exhausted. Those parties who impose upon the judicial process and clog its functioning by carrying the cases through jury selection before making a settlement which could have been made earlier should be subject to the risk of a very substantial discretionary cost assessment at the hands of the trial judge who can evaluate these abuses of the system. Someone must remind the bar and the public of the enormous cost of a trial. Reliable estimates have been made indicating that the cost is in the meighborhood of $250 per working hour in some courts, not including plant and equipment cost -- or lawyers.

COURT EXECUTIVE OFFICERS

As litigation has grown and multiple-judge courts have steadily enlarged, the continued use of the old equipment and old methods has brought about a virtual breakdown in many places and a slowdown everywhere in the efficiency and functioning of courts. The judicial system and all its components have been subjected to the same stresses and strains as hospitals and other enterprises. The difference is that, thirty or forty years ago, doctors and nurses recognized the importance of system and management in order to deliver to the patients adequate medical care. This resulted, as I have pointed out on other occasions, in the development of hospital administrators and today there is no hospital of any size in this country without a trained hospital administrator who is the chief executive officer dealing with the management and efficient utilization of all of the resources of the institution. Courts and judges have, with few exceptions, not responded in this way. To some extent, imaginative and resourceful judges and court clerks have moved partially into the vacuum, but the function of a clerk and the function of a court executive are very different, and a

court clerk cannot be expected to perform both functions.

From the day I took office, twenty-one months ago, this seemed to me the most pressing need of the courts of this country, and particularly so in my area of responsibility, the federal courts. The first step I took was to lay the foundations for a facility to train executives and I requested the American Bar Association to take the leadership in accomplishing this. That Association did so with the American Judicature Society and the Institute of Judicial Administration as co-sponsors, creating the Institute of Court Management at the University of Denver Law School. That Institute has now graduated the first group of trainees with an intensive full-time course over a period of six months including actual field training in the various courts. It will train two additional classes this year. This is not a federal facility -- I expect most of its output will go to state court systems.

In the meantime, the Congress has taken one of the most important steps in a generation in the administration of justice by providing for a Court Executive in each of the eleven Federal Circuits. The Court Executive will work under the direction of the Judicial Council of each Circuit. I need not say, surely, to an audience including many Chief Judges and administrative judges, that this will not only relieve Chief Judges to perform their basic judicial functions, but it will provide a person who will, in time, be able to develop a new methods and new processes which busy judges could not do in the past.

The function of a Court Executive is something non of us really knows very much about. There are only a handful of court administrators or executives in this country and up to now they are all self-taught. The few who were in being were, for the most part, called upon to be members of the teaching faculty for the new Court Management Institute. The concept of Court Executive or Court Administrator will have its detractors but I predict they will not be heard for very long. The history books tell us how the Admirals reacted when General William Mitchell insisted that an airplane could sink a battleship.

This desperate need for court executive officers does not alter the fact that it will require great patience and industrious homework on the part of judges and chief judges to learn to utilize these officers for their courts.

RULEMAKING POWER

A great many of the infirmities in our procedures could be cured if judges had broad rulemaking power and exercised that power. The best example of this was given a generation ago in the Federal Rules of Civil Procedure and later in the Criminal and Appellate Procedure Rules.

For the past 30 years or more state legislatures, like the Congress, have been overwhelmed by a multitude of new problems and it is increasingly difficult to get their attention on mundane subjects like rules or procedure and other internal matters of the courts. In addition, judges, by and large, have been under increasing pressure of their own daily work and have not brought these matters to the legislators.

The rulemaking process as developed in this country beginning 35 years ago is the best solution yet developed for sound procedural change. Since it is a cooperative process involving not only the legislative and judicial branches officially, but lawyers, judges and law professors, it can synthesize the best thinking at every level.

If your state does not provide for rulemaking power comparable to that vested in the Supreme Court of the United States in conjunction with Congress, I urge you to study closely the potential of this mechanism. In federal habeas corpus review of state cases it could have saved a great deal of confusion in recent years. Flexible rulemaking processes could have promptly developed post-conviction remedy procedures to blunt the impact of the imposition of federal standards on the states.

SELECTION, TENURE AND COMPENSATION OF JUDGES

The combined experience of this country for nearly two hundred years now, with elective judges in most of the states holding office for limited

terms and federal judges who are appointed with tenure, affords a basis for a careful reexamination of the whole method of the selection of judges. This is part of the long range problem, but it deserves some mention. The aggregate of two centuries of experience should be sufficient to affort a basis for a comprehensive reexamination of the methods of selection and the tenure of state judges. In saying this, I, of course, intend no reflection whatever on those state systems of limited terms and the many splendid judges in those states.

It may be that the fine quality of judicial work of state judges is in spite of, not because of, the method of selection.

The election of judges for limited terms is a subject on which reasonable men can reasonable have different views. Nevertheless the very nature of the judicial function calls for some comprehensive studies directed to the alternative methods developed in the last generation in some states. These alternatives tend to preserve the virtues of popular choice of judges and at the same time develop a high degree of professionalism, offering an inducement for competent lawyers to make a career of the bench.

We know that while there are certain patterns common in the fifty states as to the selection and tenure of judges, that there is at the same time a wide disparity in the compensation. In such states as New York, California and Illinois, to mention but three of the large states, the compensation of judges of the highest courts is as much as three times the compensation of their counterparts in some other states of the Union.

As lawyers and judges we know that the function of the courts in a small state is essentially the same as the function of the courts in the larger state. The size of the state has no relationship to the nature of the function, the degree of the responsibility, and the degree of the professional competence called for. It is, therefore, an anomaly for a wide disparity to continue. At the same time I do not suggest, by any means, that there need be a rigid, uniform standard of compensation or tenure for all the states. All I suggest is that the judges in the small states are performing

essentially the same function as that of their brothers in a large state, and the conditions of their service should not vary excessively. It is not a wholesome or a healthy thing for the administration of justice to have the highest court of a geographically large and economically powerful state receive two or three times as much as his counterpart a few hundred miles away.

A NATIONAL CENTER FOR STATE COURTS

As I range over this rather wide variety of subjects you are bound to take notice that in many instances I have been obliged to refer to matters of common or general knowledge or the result of spot checks, or other sources that are not wholly trustworthy. This suggests strongly the need for some facility that will accumulate and make available all information necessary for comprehensive examination of the problems of the judiciary in the fifty states. Recently a judicial conference developed an accumulation of 500 or more specific problems of courts.

Each of the points I have raised in the list of what seem to me the urgent priorities can be more readily treated and with better solutions if there is a pooling of ideas and efforts of the states.

For a long time we have talked of the need for a closer exchange and closer cooperation among the states and between the states and the federal courts on judicial problems. No state is without grave problems in the administration of justice. The problems vary chiefly in degree from those states with grave troubles to those on the threshold of disaster in their courts. The valuable work of the National College of Trial Judges is just one example of the value of cooperative enterprise.

We now have in this country a great ferment for court improvement which has been gaining momentum slowly over a long period of time. More recently, this has taken on a new thrust and force under the leadership of the American Bar Association. The time has come, and I submit that it is here and not at this Conference, to make the initial decision and bring into being some kind of national clearinghouse or center to serve all the states and to cooperate with all the agencies seeking to improve justice at every

level. The need is great, and the time is now, and I hope this Conference will consider creating a working committee to this end before you adjourn. I know that you will do many important things while you are here to the benefit of our common problems, but if you do no more than launch this much-needed service agency for the state courts, your time and attendance here would be justified.

I hope that in raising this subject of a need for a facility to serve as a clearing house and service agency for the states you will not think me unduly presumptuous if I make some specific suggestions for your consideration.

It seems to me obvious that the states should make the final choices and the final decisions. In offering these thoughts, I draw particularly on my experience in the twenty-one months I have been in my present office. I now see the legal profession's strongest voice, the American Bar Association, from a point of view which I never fully appreciated in my years of private practice or even in the period when I was a member of the Court of Appeals.

The American Bar Association is a force for enormous, almost unlimited, good with respect to every problem in the administration of justice. It is a force that cannot be directed or controlled by any particular group or any selfish interest because it includes approximately 150,000 lawyers and judges and law professors representing 1,700 state and local bar associations and other legal groups. Its governing body, the House of Delegates, represents 90% of all the practicing lawyers in this country. I mention these factors because the American Bar Association is essentially a grass-roots institution whose components spring from the 50 states. The facilities and power, the influence and prestige of this association are literally on the door step of every state capital through the State Bar Association, and that power and influence can be put to work in terms of achieving the objectives I have suggested to you.

My suggestion, therefore, is that in shaping the national organization or center to serve all the states, that you consider calling primarily on this great association and its 50 component state associations, along with other

groups that specialized in judicial administration. There area additional existing structures representative of all the states and a cross section of the legal profession. I refer now to the American Judicature Society, the Institute of Judicial Administration, the Conference of State Trial Judges, the Appellate Judges Conference, the Council of State Governments, and the Conference of Chief Justices. I am confident there will be widespread interest in the formation of such a group as this but it will take time to marshal all of the large resources necessary to its accomplishment. To build soundly, you must build carefully. You must have plans and time. This is not a matter than can be adequately dealt with hastily in a few hours in a busy Conference such as you are now beginning. A Steering Committee can select five to ten representative leaders empowered to convene a larger group to perfect an organization.

The first step will be the decision to create a national center for state courts of the kind I outlined. It is desperately needed and long overdue.

In emphasizing the problems of administration, management and efficiency we must always remember that efficient administration is the tool, not the goal, of justice. Therefore it is as a means to an end that we should place high priority on changes in our methods and our machinery. The noblest legal principles will be sterile and meaningless if they cannot be made to work.

In closing, I offer the full cooperation of my own office and the facilities of the Federal Judicial Center and The Administrative Office of the United States Courts. But bearing in mind my own concepts of federalism I will participate only when you ask me to do so.

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February 2, 1971

Executive Director
Legislative Council
Pouch V
Juneau, Alaska 99801

Dear Sir:

Re: Alaska nonprofit corporations and trusts - Tax Reform Act of 1969

Enclosed is a self-explanatory letter sent to Mary LaFollette of the Alaska Bar Association on January 20, 1971, pertaining to proposed non-controversial legislation.

I am also enclosing drafts of proposed legislation to which I have not assigned any Alaska statute numbers, pending review by your office.

Will appreciate your reviewing this proposed legislation and recommending its passage to the Judiciary Committees of both houses of the Legislature.

Very truly yours,

Stanley H. Reitman

SHR/mm

cc: Senator Robert Ziegler, Chairman
Senate Judiciary Committee

Honorable William Moran, Chairman
House Judiciary Committee

Ms. Mary F. LaFollette
Box 279, Anchorage

Enclosures to each

DELANEY, WILES, MOORE, HAYES & REITMAN, INC.
ATTORNEYS AT LAW
360 K STREET
ANCHORAGE, ALASKA 99501

TELEPHONE 279-3581
AREA CODE 907

JAMES J. DELANEY, JR.
EUGENE F. WILES
DANIEL A. MOORE, JR.
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
RICHARD J. WILLOUGHBY
ROBERT W. VATER
DANIEL A. GERETY

January 20, 1971

Ms. Mary F. LaFollette
Executive Director and Bar Counsel
Alaska Bar Association
Box 279
Anchorage, Alaska 99501

Dear Mary:

Re: Work of the Committee on Corporation, Banking, Business Law and Taxation

At the present time the Committee is working on a review of the Uniform Commercial Credit Code. We had been meeting every two weeks, with a minor interruption over the holidays. Presently we are meeting once a week. This review more than likely will not be completed before a minimum of sixty days. Accordingly, any legislative recommendations for this session are not contemplated.

As to our Model Business Corporation Act, as you may recall, I had indicated to our Board of Governors the Committee was going to draft legislation intended to update this uniform Act. In discussing this objective, the Committee members' concensus was that we defer making any suggestions regarding the existing Model Act pending a review and analysis of some of the more modern corporation acts recently enacted by the States of Delaware and New York. Rather than amend the Act piecemeal, it was felt a more comprehensive review should be made of the latest thinking in the field of corporate statutory law. The Committee now has set a goal of undertaking such review after the UCCC study is behind us.

The only legislation the Committee currently recommends are two rather technical changes in the area of non-profit corporations and administration of trusts, grounded upon the Federal 1969 Tax Reform Act. In the latter area we do

not have any statutory law. Enclosed is a self-explanatory letter dated October 30, 1970 from the Chairman of the Section on Real Property, Probate and Trust Law of the American Bar Association. Mary, you will recall this letter initially flowed through your hands before it reached my desk.

The enactment of these suggested provisions will obviate or eliminate the need for amendments of non-profit corporations and trusts which operate in the private foundation area. Admittedly, in Alaska there may not be more than a handful of such organizations. Personally, I am aware of at least four or five. To amend a non-profit corporation is not a significant technical problem, as our non-profit statute provides a procedure for doing so. However, with respect to trusts, and particularly testamentary trusts, a court proceeding will be necessary. In our view, the suggested ABA language pertaining to non-profit corporations can be readily added to the statute in 10.20. As to the trust language, it is admittedly a little more troublesome to find a home or area of the Alaska statutes to tie into. Apparently Title 13 may be the most logical title.

This probably should be cleared with personnel of the Alaska Legislative Council.

Best regards,

Stanley H. Reitman

Stanley H. Reitman

SHR/mm

Enclosure

Clear with - Campbell

Section of Real Property, Probate and Trust Law

AMERICAN BAR ASSOCIATION

1155 East 60th, Chicago, Illinois 60637 Telephone (312) 493-0533

October 30, 1970

NOV 17 1970

Dear Sir: ALASKA BAR ASSOCIATION,

A serious and urgent problem has been presented to all Private Foundations by the Tax Reform Act of 1969. That Act requires all existing Private Foundations, in order to maintain exemption from Federal Income taxation, to change their governing instruments to comply with the Act or to bring suit to reform their instruments. This must be done before January 1, 1972. [Internal Revenue Code Sec. 508 (e)].

The Section of Real Property Probate and Trust Law of the American Bar Association has been disturbed by the possible crowding of court dockets and confusion caused by such suits and by the damage which might be done to those Private Foundations which for any reason failed to take action before the deadline. The Internal Revenue Service has indicated that the requirements of the Act can be met by statutes passed by the several states. To be most useful any such statute should be adopted in the 1971 Legislative session.

Accordingly, as a matter of information and to furnish a vehicle for study and consideration, a subcommittee of this Section's Committee on Charitable Trusts has prepared two draft acts - one for corporations and one for trusts.

Copies of these two draft acts are enclosed. The shortness of time has so far made it impossible to have these drafts considered by other appropriate bodies of the American Bar Association or other organizations to whom we are also sending copies. We hope you will find these drafts helpful. If you wish additional copies or further information, please get in touch with John E. Rogerson, One Boston Place, Boston. Massachusetts 02108, Telephone 617-723-7020, the Chairman of the Committee which prepared these drafts.

Sincerely yours,

G. Van Velsor Wolf

Chairman

THESE DRAFTS HAVE BEEN PREPARED BY A SUBCOMMITTEE OF THE COMMITTEE ON CHARITABLE TRUSTS OF THE SECTION OF REAL PROPERTY PROBATE AND TRUST LAW OF THE AMERICAN BAR ASSOCIATION AND ARE SUBMITTED FOR INFORMATION, CONSIDERATION AND DISCUSSION ONLY. THEY HAVE NOT YET BEEN CONSIDERED OR RECOMMENDED FOR ADOPTION BY THE AMERICAN BAR ASSOCIATION OR ANY OF ITS SECTIONS.

(1) No corporation which is a "private foundation" as defined in §509(a) of the Internal Revenue Code of 1954, shall

(a) engage in any act of "self-dealing" (as defined in §4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4941(a) of the Internal Revenue Code of 1954;

(b) retain any "excess business holdings" (as defined in §4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4943(a) of the Internal Revenue Code of 1954;

(c) make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944(a) of the Internal Revenue Code of 1954; and

(d) make any "taxable expenditures" (as defined in §4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4945(a) of the Internal Revenue Code of 1954.

(2) Each corporation which is a "private foundation" as defined in §509 of the Internal Revenue Code of 1954 shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by §4942(a) of the Internal Revenue Code of 1954.

(3) The provisions of §§1 and 2 shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the articles of organization or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such sections.

(4) Nothing in this act shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

(5) All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.

(1) In the administration of any trust which is a "private foundation", as defined in §509 of the Internal Revenue Code of 1954, a "charitable trust", as defined in §4947 (a) (1) of the Internal Revenue Code of 1954, or a "split-interest trust" as defined in §4947 (a) (2) of the Internal Revenue Code of 1954, the following acts shall be prohibited:

(a) engaging in any act of "self-dealing" (as defined in §4941 (d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4941 (a) of the Internal Revenue Code of 1954;

(b) retaining any "excess business holdings" (as defined in §4943 (c) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4943 (a) of the Internal Revenue Code of 1954;

(c) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944 (a) of the Internal Revenue Code of 1954; and

(d) making any "taxable expenditures" (as defined in §4945 (d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4945 (a) of the Internal Revenue Code of 1954;

provided, however, that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of §4947 of the Internal Revenue Code of 1954.

(2) In the administration of any trust which is a "private foundation" as defined in §509 of the Internal Revenue Code of 1954, or which is a "charitable trust" as defined in §4947 (a) (1) of the Internal Revenue Code of 1954, there shall be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by §4942 (a) of the Internal Revenue Code of 1954.

(3) The provisions of §§1 and 2 shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the instrument governing such trust and that the same may not properly be changed to conform to such sections.

(4) Nothing in this act shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

(5) All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Alaska Judicial Council
941 FOURTH AVENUE
ANCHORAGE, ALASKA

February 26, 1971

The Honorable Governor William A. Egan
Pouch A
State Capitol
Juneau, Alaska

Re: Juneau Court Facilities

Dear Governor Egan:

At present the Alaska Court System facilities in Juneau are located in the State Capitol building. These facilities are inadequate for present needs not only from the standpoint of inadequate space but also by way of the nature of the facilities and their physical layout. Plans for the new state office building in Juneau do not include space for the Alaska Court System. For this reason, there is an urgent need that a separate court facility be constructed in Juneau.

At my request, the Juneau Bar Association formed a committee to inquire into the needs and requirements of a State courthouse in Juneau. Recommendations were received by that committee from those agencies having a potential requirement for space in a new court facility. The following is a summary of those recommendations:

(a) Supreme Court - Justice John H. Dimond, of the Supreme Court residing in Juneau, provided an estimate in the amount of 8,239 square feet for the Supreme Court. This estimate includes a courtroom, offices for five justices, secretaries' office and reception area, offices for two law clerks, clerk's office, chief deputy and deputy clerk's office, workroom area, supply and storage area, restrooms and library facility. It is anticipated to be adequate for the Supreme Court needs in the foreseeable future.

(b) Superior Court - Presiding Judge Thomas B. Stewart has provided an estimate of total space requirements of the Superior Court of a minimum of 25,000 to 30,000 square feet of floor space. This area would be sufficient for the following facilities: two courtrooms, two jury rooms, one judges' robing room, one conference room, two judge's chambers with reception rooms and secretarial space, one office for visiting judge, one office for two law clerks, one jury assembly room, one witness assembly room, two attorney-witness conference rooms, one judges' lounge, one attorneys' lounge, one judges' library, one pressroom, one office for Clerk of Court, one office for Court Trustee functions, one office for marriage counselor functions, one office for clerk's counter and general filing space, one office for transcribing functions, and one public law library for a capacity of 50,000 volumes.

(c) District Court - Presiding District Judge Bruce Monroe estimates a 25,000 to 30,000 square feet requirement to include three courtrooms, two of which are suitable for jury trials. This space would also accommodate court personnel for the District Court including: a coroner-public administrator and clerical personnel, office spaces and counter area to accommodate five clerks, one secretarial space and a reception room for the judges' chambers, witness lounges, jury lounges, and attorneys' conference rooms.

(d) Recording Office - Judge Monroe states that if land records are kept on microfilm, the above estimate for District Court space should be adequate for a recording office.

(e) Administrative Office - The office of the Administrative Director, Alaska Court System, recommends that 2,000 square feet be available for administrative personnel to include a 600 square foot conference room which would provide space for executive meetings and work space for visiting Anchorage personnel.

(f) State Police Service Section - Mr. Personnet, former Commissioner of the Department of Public Safety, estimated that Juneau judicial services functions would require space of approximately 1,000 square feet.

(g) Press facilities - 300 square feet estimated.

(h) Health and Welfare - Mr. Keith Stell, Regional Administrator of Probation and Parole, estimates that 1,540 square feet of office space are needed for six probation officers, a regional administrator and secretarial staff. Also needed are adequate separate holding facilities for adult and juvenile prisoners brought to court for arraignment or trial. Two cells of a total of 300 square feet should be adequate. Mr. Stell believes that juvenile short-term detention facilities should be in another building near the court.

The Alaska Judicial Council recommends that monies be appropriated during the current legislature for preconstruction planning and site acquisition for the Juneau Court facility to satisfy the requirements set forth above. We are attaching copies of correspondence describing in detail the needs of the agencies listed above.

Very truly yours,

George F. Boney

George F. Boney
Chairman
Alaska Judicial Council

cc: Justice Dimond
Judge Stewart
Judge Monroe
Commissioner Chapple
Robert Reeves
Keith Stell
William Ruddy
All Members, Alaska Judicial Council

P.O. Box 1224

February 26, 1971

Mr. Russell Dunn
Staff Executive
Alaska Judicial Counsel
429 "D" Street, Suit 201
Anchorage, Alaska 9[illegible]1

Dear Mr. Dunn:

In response to our telephone conversation of this date, let me reconfirm the information I discussed with you.

I believe that Mr. Cain has adequately summarized our space needs in terms of the Probation Office in the new court building. Hopefully this space will be in a close proximity to the Superior Court (like on the same floor). I do want to clarify, too, the difference between a holding cell and a detention facility. First of all, the detention facility should be in a more informal setting and not in the Court building itself. In terms of planning then, for this particular structure I do not think that you should consider the space needs of a detention facility. The holding cell is another matter entirely, however, and I believe that it should be considered.

Alaska Statutes indicate that you cannot hold juvenile inmates in the presence of adult inmates. It often happens that secure cell-like holding facilities are needed at the same time in the Court House. Therefore, plans should be made for separate holding facilities for both juveniles and adults. These facilities should be designed to hold individuals for no longer than one hour at most. They need not be large but they do need to be secure. I believe that 150 square feet for each holding facility would be adequate. That would be a total of 300 square feet for both adults and juveniles.

Thank you for your patience in this matter and I am sorry to say that the letter John sent to you was apparently sent to the wrong address and returned to us. It is in the mail now and for that matter you should have received it again by this time. If we can be of any further assistance, please let us know as we are as anxious as anyone to see that the new Court facility has adequate space for our program needs.

Sincerely,

Keith Stoll
Southeastern Regional Administrator
Probation-Parole

KS:cp

P. O. Box 1224
Juneau, Alaska 99801

February 22, 1971

Mr. Russell Dunn
Staff Executive, Judicial Counsel
201429 "D" Street
Anchorage, Alaska 99501

Dear Mr. Dunn:

This will confirm our telephone conversation of 2/19/71, concerning space needs for the Probation Office in the proposed Juneau Court Facility. It is our understanding that you are now in the process of preparing plans for this.

The Probation Office would need approximately 1540 square foot. This breaks down as follows:

6 Probation Officers @ 120 sq. ft. each =	720 sq. ft.
Regional Administrator's Office	200 sq. ft.
Space for 3 Secretaries	240 sq. ft.
Conference Room	180 sq. ft.
Reception Area	200 sq. ft.
Total	1,540 sq. ft.

To the best of my knowledge, this would be the extent of our space need in the court facility. We are assuming that Mr. Stoll, in his letter to you of October 21, 1970, did not intend to convey the thought that a detention facility should be built into the court building itself, but rather be located elsewhere. We think 150 square foot would be adequate for a juvenile holding cell for the court.

We would be pleased to hear from you as plans for the court facility progress. We are presently in dire need of space. We have two staff vacancies which we are unable to fill for lack of working area.

Sincerely,

John L. Cain
Probation-Parole Officer

JLC/mjr

Alaska Court System

State of Alaska

...IVE DIRECTOR
...BOTT

OFFICE OF ADMINISTRATIVE DIRECTOR

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

March 1, 1971

Theodore R. Dunn, Esq.
Secretary to the Judicial Council
429 "D" Street
Anchorage, Alaska 99501

Dear Mr. Dunn:

The Office of the Administrative Director for the Court System will require at least 2,000 square feet of space in the new court building which is being planned for Juneau. This office intends to maintain a full time Assistant Court Administrative Director in the Juneau area with offices for backup as well as a full conference room.

This space will be needed immediately upon completion of the new court building.

Sincerely,

John W. Abbott

John W. Abbott

/cg

Supreme Court
State of Alaska

October 9, 1970

POUCH U
CAPITOL BUILDING
JUNEAU, ALASKA
99801

William G. Ruddy, Esq.
President, Juneau Bar Association
Box 1211
Juneau, Alaska 99801

Dear Bill:

This is in reference to Chief Justice Boney's letter to you of September 29, 1970 regarding the court building at Juneau. On page 3 Chief Justice Boney suggests that you consult with me as to the requirements of the supreme court and that your committee come up with the recommended square foot estimate of the supreme court needs in the new building.

Attached is a document entitled "Projected Space Requirements for Supreme Court". The total area which we shall require, 8,239 square feet, will take care of the needs of the supreme court in the foreseeable future.

It is my understanding that Mr. Eastaugh is Chairman of the Committee you appointed to investigate the needs and requirements for a state courthouse in Juneau. I am sending a copy of this letter and the enclosure to Mr. Eastaugh, as well as to Chief Justice Boney.

As I told you on the telephone the other day, it is most important that Chief Justice Boney have a report on the complete requirements for a state courthouse in Juneau in time for the Judicial Council meeting in Anchorage on October 23, 1970.

Sincerely,

John H. Dimond

John H. Dimond

cc: Chief Justice Boney
F. O. Eastaugh

Projected Space Requirements for Supreme Court

Courtroom	1,552	Square Feet
Offices for 5 Justices	1,800	" "
Secretary's Office & Reception	484	" "
Offices for 2 Law Clerk's	800	" "
Library	1,332	" "
Clerks Office	306	" "
Chief Deputy & Deputy Clerks Office	500	" "
Workroom Area	675	" "
Supply Room & Storage	500	" "
Rest Rooms:		
Mens	100	" "
Ladies Lounge & Restroom	190	" "
Total	8,239	" "

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

THOMAS B. STEWART
PRESIDING JUDGE

At Ketchikan
October 21, 1970

Honorable George F. Boney
Chairman, Alaska Judicial Council
941 - 4th Avenue
Anchorage, Alaska 99501

Dear Chief Justice Boney:

Your recent letter concerning a proposed new court building at Juneau coincided with a like request from the Juneau Bar Association for initial recommendations as to space needs of the superior court in such a structure. THis response is intended to answer both letters, as well as to provide information directly to the Alaska Judicial Council, which, I understand, will consider the subject at its next meeting.

In the brief time since these requests were received, my trial calendar has virtually no time to prepare adequately considered recommendations. The following statement of needs is therefore offered as only preliminary and subject to substantial revision upon opportunity for a complete review.

The structure should include at least the following facilities:

2 courtrooms
2 jury deliberation rooms (adjacent to the courts and with attendant bailiff space, with one room large enough for grand jury use)
1 judge's robing room
1 conference room (appropriate for children's proceedings, pre-trial conference, etc.)
2 judge's chambers, with an attendant reception room for secretaries to two judges
1 office for a visiting judge
1 office for two law clerks
1 jury assembly room
1 witness assembly room
2 attorney-witness conference rooms
1 judges' lounge
1 attorneys' lounge
1 judges' library
1 press room

1 office for the clerk of court
1 office for court trustee functions
1 office for marriage counselor functions
1 office for clerk's counter and general filing space
1 office for transcribing functions
1 public law library, with associated "stack" space for 50,000 volumes

The above space would serve only operations of the superior court, apart from related legal and staff services, and it would require a minimum of 25,000-30,000 square feet of floor space. This estimate would include circulation space, public toilets, mechanical services and stairways.

Consideration must of course be given to court-related functions such as those of the district attorney, public defender, probation and parole, process services of the State Police, holding cells for prisoner-defendants, etc. Particular concern must be taken (in early planning stages) for unique acoustical requirements for court recording, court furnishings, and other special needs of court operations. All courtrooms should be interior space without window exposures to outside traffic noise and other distractions. Attention must be given to private access to and private circulation within working areas for judges. Air conditioning apparatus without attendant background noise is essential in the courtrooms.

Some general considerations of major importance include ample off-street parking, substantial setback of the structure to permit dignified landscaping of the surrounding grounds, and exterior design and location fitted within the long-range state capital complex plans.

I will look forward to the opportunity to participate in more detailed and systematic planning for this significant capital improvement program for better judicial administration at Juneau.

Very truly yours,

Thomas B. Stewart

Thomas B. Stewart

cc: Juneau Bar Association

District Magistrate Court
State of Alaska
FIRST JUDICIAL DISTRICT
BOX 2344
JUNEAU, ALASKA
99801

November 6, 1970

Frank Doogan
Attorney At Law
311 Franklin Street
Juneau, Alaska 99801

RE: Juneau District
Court Facilities.

Dear Frank;

You have asked that I be more specific, in terms of square footage, about the anticipated requirements of the District Court at Juneau. I have included a copy of a letter to William G. Ruddy, President of the Juneau Bar Association, for your reference. In this letter I outline this Court's anticipated needs simply by describing the number of rooms and uses for those rooms. The comments in this letter should be read in light of my earlier letter to Mr. Ruddy.

It is my present belief that the needs of the District Court can be fulfilled with a minimum of 25,000 to 30,000 square feet of floor space. This footage would include three courtrooms. Two of the courtrooms should be capable of handling jury trials while the other should be designed as an arraignment room and a court-room for trials without jury. The latter courtroom would also be used for coroner's hearings, motions and hearings of that general nature. The footage should accommodate support personnel for the District Court which would include:

1. Coroner-Public Administrator and one clerical personnel for his office.

2. Office space and counter area to accommodate five clerks.

3. One secretarial position and reception room for the judges chambers.

4. Attendant rooms for witness lounges, jury lounges and attorneys conference rooms.

It should be noted that all courtrooms should be in accordance with established American Bar Association standards for newly constructed courtrooms. The same standards should also be applied to attendant rooms such as jury chambers, witness lounges and attorneys conference rooms.

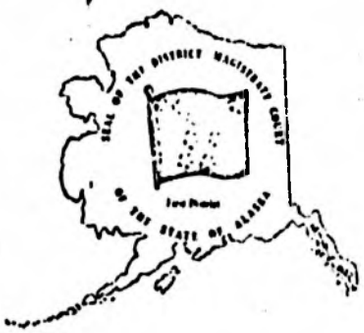
With approximately 25,000 to 30,000 square feet it is my belief anticipated growth of this area could be accommodated. I would anticipate a maximum of four judges could work out of the three courtrooms should our case load ever require additional judges. Prior to that time excess court space could be utilized, on an as needed basis, by Superior Court overages. I would also predict that a minimum of 25,000 to 30,000 square feet would allow additional attendant personnel such as law clerks to serve the District Judges.

If you have any further questions I will be happy to give you my opinion. Please do not hesitate to call on me.

Very truly yours,

Bruce

Bruce Monroe,
Presiding District Judge



District Magistrate Court

State of Alaska

FIRST JUDICIAL DISTRICT

BOX 2344

JUNEAU, ALASKA

99801

October 14, 1970

William G. Ruddy, Esq.
Juneau Bar Association
P. O. Box 1211
Juneau, Alaska 99801

Dear Bill:

Thank you for providing me with your correspondence with Chief Justice Boney. With very little changes, perhaps only in terminology, I would subscribe to his basic proposal for District Court facilities.

With anticipated growth I predict the District Court will need at least two courtrooms capable of handling jury trials and one courtroom for trials without jury. We will need an office for the Coroner-Public Administrator and one clerical personnel for his office. We will need one office space and counter area to accommodate five clerks. As many as three of these clerks might be in court at one time while others attend to clerical chores and serve the public. There should be one room devoted to secretarial help and a reception room for the judges chambers. We would also need attendant rooms for a witness lounge and jury lounge.

With two courtrooms capable of conducting jury trials and one courtroom which could be used for trials without a jury, arraignments, motions and coroners deliberations we would have the necessary flexibility to accommodate as many as four District Judges should the caseload ever justify this number.