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TRAFFIC TICKETS

NEWMAN F. BAKER†

The Matter of Policy

How to secure safety on the highway is a national problem of importance to all of us. Of course, we could slow down traffic to the point where most of the dangers of motoring would become non-existent. But we demand speed and hence the experts in the traffic safety field are seeking to reduce accidents, while at the same time allowing the maximum safe speed in motor transportation.

Traffic safety is more difficult to attain than safety in a factory, ship, refinery, or public utility. A factory, for example, may adopt stringent rules backed by the threat of loss of employment; dangerous machines may be fenced off; "Keep out" signs may be posted, and the irresponsible public excluded. Close control is the secret of industrial safety. In the use of the streets, however, we deal with the general public—the great human average. And so far we have followed the usual policy of attempting to secure the kind of human conduct which we desire by passing *quasi*-criminal laws regulating that conduct. Has this been effective? At this time no one has found the answer.

In the traffic safety movement the three "E's" play the most important part: engineering, education, and enforcement. Traffic experts agree that all three must be employed, but there is a deep-seated difference of opinion concerning the usefulness of education as against enforcement. Of course, it is an education to be arrested—strict enforcement may deter some wrongdoers—and a thoroughly educated community may become one where laws are easily enforced. Still, some would say, "Dangerous drivers ought to be apprehended, tried, and imprisoned; the only way to achieve safety is to make them obey our traffic laws to the letter. Heavy fines and long jail terms will reduce accidents." But others would reply, "There is no need to take traffic offenders to the station, require them to give bail, stand trial, and be punished. Perhaps they are careless, but all that is necessary is to warn them to be

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more watchful. Rough treatment by the police in traffic cases does little good and may cause citizens to oppose the whole system of law enforcement."

Actually, there can be no hard and fast line between education and enforcement—the two can be blended together, and are in many cities. Moreover, a town having heavily travelled highways, filled with interstate cars, may profit by a widespread reputation of being severe to violators, whereas educational schemes would fail utterly. And again, a compact, fairly-isolated community can well be educated. The drivers at least would stay there long enough to be exposed to it. But what shall be emphasized? What scheme is the wisest policy to pursue? What is best to ensure safety? What is most economical? What is easiest to administer? In a study of the "papers" used by traffic police throughout the country we find genuine uncertainty—a groping around or experimentation, which at first glance is most surprising to a person trained in legalism. The purpose of this article is to describe certain methods now in general use throughout the country.

Traffic Control Becomes Administration

Enforcement stress has almost eliminated "fixing" and that alone has meant much for safety. Also, it has been shown beyond question that the accident rate is low in cities having strict enforcement. Moreover, enforcement is highly proper, for traffic violations are at least *quasi*-criminal offenses, created by law, either statutes or ordinances. The bad effect of winking at certain laws is felt in other adjacent fields. Look back to the "Era of Prohibition" for an outstanding example—organized crime supported by bootlegging. However, the traffic experts are teaching us that enforcement "to be most effective must be selective" and directed at the driver most likely to become involved in an accident. Complete enforcement is impossible and, therefore, they say that we must pick and choose as to time, place, and type of violation in any enforcement program. That means different standards for some than for others. It means the concentration of effort upon the worst offenders while ignoring lesser offenders. The personal element supersedes even-handed justice and colors the whole process. The science of traffic control and accident prevention, plus experience, take the place of the enforcement officer's oath to apprehend *all* criminals. Traffic law enforcement, then, has grown beyond the criminal law as we have known it and has become a *matter of*

administration. The Traffic Bureau has largely supplanted the court of law.

Why has traffic control left the domain of criminal law? *First*, we must note its very bigness. In 1938 there were 32,400 fatal accidents, 1,150,000 personal injuries, 5,000,000 accidents resulting in property damage of \$1,500,000,000, 4,500,000 arrests, probably 4,000,000,000 dangerous violations, and innumerable petty violations.¹ Regular criminal court procedure can care for homicide, drunken driving, and the worst of the reckless driving cases, but the vast remainder of these violations would merely clog the inelastic American court systems until they could not move. *Second*, when enforcement becomes selective and is found to be a personal matter, administrative devices must be created, through delegated powers, to speed it along. Probably equity courts could handle traffic offenders just as the juvenile courts use *in personam* decrees for youthful offenders. But the experiment has not been tried because of the early determination that traffic violations should be handled as crimes. Law courts can deal with abstractions and interpretations but legal procedure as we know it cannot solve the big problems of mushroom growth involving millions of people, wherein precedents are of small value. *Third*, uniform justice does not solve the accident problem any more than a "National Castor Oil Week," if followed, would solve a medical problem. Traffic enforcement for safety requires specially trained officers, shrewd accident prevention squads, complete maps and records with constant analysis and change of regulations, and enforcement where it will do the most good.

It is interesting to note that the public demand for safety in the streets has made it possible for the police to make use of administrative devices in traffic law enforcement which would be impossible in a murder case, a will contest, or a divorce proceeding. Anything is justified, legal or not, just so long as it seems to lower the accident rate. Unfortunately, the scientific principles so nicely worked out for selective enforcement, *i. e.*, when and where in the city the police should concentrate their efforts, have not been de-

¹ Traffic research studies show that 40% of all pedestrians violate light signals. Pedestrian violation is difficult to estimate but the total would be many billions. Note, also, that some dangerous offenses are continuing any number of times, *e.g.*, defective brakes or lights. About 10% of the total number of automobiles have defective lights. The figures given above were prepared for the writer by Mr. Richard Holcomb of the staff of the Northwestern University Traffic Institute. His chief source of data was the annual "Accident Facts" of the National Safety Council. He also used numerous police surveys and the New York Mayor's Traffic Advisory Committee's recent study.

veloped to any great extent in another phase of selective enforcement—who should be arrested and how should they be cured. As always, the personal relations in any governmental field lag behind the application of cold, hard science. It is in this field that the traffic safety man of the future must operate. Who are prone to have accidents? How can they *as people* be controlled? What are the best methods of control?

The Dallas "T" Men

Before going into this question further, and really we can only pose it anyhow as so little is known about it, let us see a few of the traffic safety techniques now employed by policemen. Chief R. L. Jones of Dallas, Texas, has enlisted the aid of the famed Dallas "T" Men, a sort of vigilante group of one hundred safety minded citizens. These citizen patrolmen report traffic law violations to the police on self-addressed postal cards. They operate secretly and are identified only by number. Their reports are mailed into the Police Bureau of Traffic Education and then the accused gets a warning "T" Man-letter and his name is filed. Chief Jones reports: "When one owner gets as many as three reports against him a sergeant in the Police Department, especially delegated to 'T' Man work, pays a personal visit to the home of the violator." Presumably the sergeant attempts to educate the offending owner and warns him that now the law will step in unless there is sudden and complete reformation of his driving habits. It should be interesting to work as a "T" Man, and their efforts may be effective for the fatalities in Dallas dropped from 48 in 1937 to 24 in 1938. However, it is not strictly legal. These men are not deputized; they have no connection with the police; they are only doing what all good citizens should do; and the *law* does not give anybody the right to receive warning cards from laymen instead of the procedure set out in the statutes.

Fines by Mail

In the "Instructions to Officers in the Use of the Traffic Citation Tag," issued by the Cincinnati Chief of Police, we find: "It is not necessary to enter into a discussion with a violator concerning his action after he has received a tag. Everything he needs to know is printed on the face of the tag. On the rear are the sections of the Traffic Code pertaining to its use. The important thing is that he answers at the Traffic Bureau within forty-eight hours. Letter

writing and payment by mail should not be encouraged." Note the last phrase, "payment by mail should not be encouraged." In sharp contrast we find that in Evanston, Illinois, the violator will receive a swamp-green card, improperly labeled, "Arrest Notice," as no arrest is made, and the citizen may read thereon: "If you are guilty of this violation, sign the plea and waiver on the back of this notice and mail, bring, or send it, together with a check, money order, or currency to cover your fine (see schedule of fines on back) *within 48 hours* to the Clerk of the Municipal Court, City Hall, Evanston, Illinois." Evanston wants its money. Cincinnati wants its citizens' time and trouble. Which is preferable?

Courtesy to Visitors

In Knoxville a visitor may return to his parked car and feel a sudden sinking of his heart—"Oh! Oh! I've been tagged!" But when he studies the tag he glows with appreciation, for it reads: "Visitors Courtesy Card. Welcome to Knoxville, Feel Free—to ask any Patrolman for information. It will be his pleasure to assist you." Out of town motorists in Chattanooga are tagged with a card reading: "This card entitles you to park your car as long as you please in *Chattanooga*. *Never mind the time limit* (But please be reasonable)—*For out of town autoists only*. Severe penalty if used by Residents of Chattanooga or vicinity." In Los Angeles the visitors ticket is printed with this questionable assumption: "It is the opinion of Officer Badge No. that the violation was unintentional on your part." Augusta, Georgia, uses a cheery tag distributed by the police in a Chamber of Commerce advertizing scheme. It is reproduced below:

The Garden City of the South

HELLO, FOLKS!
YOU'RE TAGGED

But it is just to let you know we notice you, and appreciate your coming to Augusta. We hope that your visit has been pleasant and that you will return soon.

The Latch String Is Out!

CITY OF AUGUSTA, GEORGIA

R. E. ALLEN, JR., Mayor

C. J. WILSON, Chief of Police

The out-of-town violator is always a problem to the police. The ordinary tag is almost useless because the average person tagged will leave town just that much sooner—to the loss of the merchants and taxpayers. Thus, many cities recognize the economic evil of arresting visitors by making out-of-towners a class in themselves. Is this legal? No. But is it proper? That is difficult to say as it is a matter of policy not yet tested out.

Warning Tags

We next encounter a variety of warnings. In Miami they are called "Courtesy Cards" and they recite the violator's offense and then ask politely for his cooperation. On the back is a statement of the Miami traffic toll in killed and injured up-to-date, and a request: "Won't you please help us to reduce accidents by observing all the ordinances which have been enacted for your protection? Please obtain a copy of the traffic rules at the Traffic Bureau at Police Headquarters and read them over several times so that you may fully understand them. Will you please drive in such a manner as not to cause an accident?" Denver also employs such a please-and-thank-you tag.

In contrast to this deference is the Buffalo warning which pointedly declares that a subsequent violation will result in the issuance of a summons for appearance in the City Court. In Sacramento the tag announces that if the motorist offends again, "we will ask for a warrant for *your arrest* on both violations." In Cleveland the warning tag is issued only to out-of-staters and reads: "You have violated a traffic ordinance and have infringed upon the rights of others in the use of the streets of Cleveland. *Further violations will result in your arrest* [Big red letters]." The Evanston tag declares that "three such warnings within a year, and every warning thereafter within the same year will result in arrest." This kind of tag is quite common.

Bridgeport, Connecticut, uses a regular summons tag, merely stamped "Warning." Cincinnati employs a red letter "Warning Tag (*This is not a citation tag*)" which has a statement for the motorist, respectfully telling him that a record is being made of the warning and additional violations "may" compel arrest or cancellation of driving rights. Saginaw, Michigan, and many other cities have found the may-arrest better than the will-arrest.

In addition to the types of warnings listed above, which are for parking and driving violations, the Lincoln, Nebraska, police have

used a warning "Notice of Defect" which is quite useful. Greenwich, Connecticut, also gives warning to owners of defective cars. This seems quite reasonable as any of us may drive a car for a considerable time without noticing that a headlight has burned out. The Greenwich tag tells the owner to have his car repaired within two days and then have it inspected by the Greenwich police, or—"Disregard of these instructions may result in arrest."

Just how effective are these warnings, so easily given and so cheaply administered? We ought to know, and some day we may devise a means of correlating their use to the problem of safety.² At the present time the police are divided in their opinions. One Director of Traffic writes frankly: "Exhibit No. 1 is a warning tag which may be left on the automobile and is used for miscellaneous violations. Its only value is purely informative or psychological. . . . Exhibit No. 3 is a warning tag left for visitors when the owner is not present. It is used only from a public relations standpoint." It is interesting, is it not, to find a police captain acknowledging the importance of public relations—a new element in "society's first line of defense against the forces of crime." Many officers (and we cannot name the cities, of course) say in effect, "Yes, we use warning tags but they aren't much good. It's all just a bluff. Nothing is ever done about them." We hope that we are not violating a confidence when we quote from a letter written by Toledo's Inspector of Traffic who said, "No warning tickets are enclosed for the very good reason that we do not use them. It has been our experience here that a written notice has little or no effect on the violator, whereas the verbal or oral message backed by courteous but emphatic admonitions are generally heeded." Here is a splendid place for worthwhile psychological or sociological research.

Of course, the "tolerances" of the traffic officer, when he gives a warning instead of an arrest or gives a "bawling out" instead of an official warning, affect different people in different ways. A great deal of criminological research has been devoted to the general question of the effectiveness of tolerance toward law breakers, the "machine-gun school" and the "sob-sisters" representing the two extremes. General research in crime cures has heretofore been rather unproductive, due to lack of scientific proof. The effect of

² A valuable study was made recently by the Wichita Police Department under the direction of Chief O. W. Wilson. See 30 J. Criminal L. and Crim. 83 (1939). It is entitled, "Police Control of the Automobile Driver," and was made possible by the assistance of the Works Progress Administration.

tolerances in traffic cases, however, may be measured against accident indices and safety records with considerable accuracy. Herein a careful study may be productive of much good, not only in the safety field but in law enforcement generally. The traffic expert may help to solve a fundamental question of penology.

Tickets

When next the reader witnesses the police handling a traffic violation, see if the tag or ticket is made out in hard-to-fix triplicate form. For several years the Northwestern University Traffic Institute has advocated the triplicate ticket system because it is known from experience in setting up accident bureaus that ticket-fixing is the greatest evil which the traffic officer must face. The usual ticket, employed in the better police departments, comes in a book much like the one used by clerks in grocery and department stores. Carbons are already inserted so that when the officer takes down data about the violation it is reproduced upon all three parts of the ticket. Then the officer gives a jerk and the carbons snap out. Ordinarily one part is given to the offender, another goes to the Traffic Bureau or court, and the third remains in the book for the officer. Each part is numbered and each book is numbered. Under the elaborate precautions adopted in many cities, such as Cincinnati, the officer is held accountable for all the tickets in his book. A ticket cannot be fixed unless his superior officers at the Bureau and the court attachés all agree. The Traffic Institute advocates the practice of sending an additional ticket copy to the city treasurer's office, a shrewd scheme which by itself would prove most embarrassing to the fixer. This is done in Cleveland, and in Los Angeles the present form of "personal citation" consists of five sheets. Thus, this simple mechanical device stimulates honesty just as the cash register does in a store; shortages will appear and are difficult to explain.

Some of the tags, tickets, notices, or citations, or whatever they may be called, are equipped with wire fasteners; some have rubber bands or strings; some have holes to fit over car door handles; some are of cardboard with perforations so that they can be divided into several parts; and some are in book form as described above. They are in all shapes, colors,³ and sizes and are

³ A special news bulletin of July 24, 1939, reports that the Chief-of-Police of Wausau, Wisconsin, Walter English, "suspects that the red hue of the Wausau ticket enrages the motorist and makes him resent the fine he has to pay." He has suggested a soothing color.

used for every convenient traffic control purpose, it seems. But no matter what we call them or what shape they are in, they are some form of the age-old summons known to the law courts for centuries. A summons is: "A notice handed to a person that a legal action has been initiated against him in a court and that he is required to appear and answer to the complaint." The older form of summons was a writ, or court order, directed to the sheriff, but the modern form may be like the one used in Berkeley, California: "*Attention*. Your *number* has been taken. You have violated Section of the Traffic Ordinance No. 1857 N. S. (or) (You have violated Section of the State Vehicle Code.) Report to Police Station, City Hall, Grove and Allston Way, *this date*. Bring this card with you. Police Officer, No., Berkeley Police Department." The ticket used by the Beaumont, Texas, Police is the only one we have seen which actually resembles the usual type of legal "summons." Atlanta uses parts of an old form, probably dating back four centuries, in that it is in the nature of a writ being addressed "to the Marshal and Deputy Marshal of the City of Atlanta." But it is in the name of the Atlanta Chief-of-Police, M. A. Hornsby. The Lincoln ticket is a terse "appear in Municipal Court, Municipal Building, 10th & Q. at 9 A.M. 193. . . ." The Saginaw, Denver, and Greenwich tickets are in the politer form of "notices."

Several cities use several different forms of summons: In Rockford, Illinois, special tickets are issued to moving violators; in many places a pink summons is to the "cafeteria" court, *i.e.*, a court usually designed for careless parkers, and a white one is to a regular city court where moving violations are settled. In Cleveland, when delinquent parking violation tickets fail, there is issued a formidable looking summons from the office of the Prosecutor of the Criminal branch, Cleveland Municipal Court. A report from Cleveland indicates that "on its face, evidencing official court action, it has a very salutary effect upon the delinquents, and many thousands of dollars have been paid in by violators which otherwise might never have been collected. . . . It causes him alarm and concern when he receives it. It strikes at his purse strings." Toledo relies upon a personal letter from the Chief of Police along with a tag and a ticket. Louisville uses the triplicate cardboard "Traffic Violation Notice" and also a remarkable document called, "Ordinance Warrant" which comes in duplicate and is signed in advance by "James B. Kelly, C.P.C.L." (Clerk of Police Court,

Louisville). This paper is used as a summons and if the violator fails to appear the officer uses his own signature to get a "regular" warrant.

Various Irregularities

An interesting variation is found in numerous cities, and that is the inclusion of a sort of recognizance on the ticket. The California cities (*e.g.*, San Francisco), have a space wherein appears: "I hereby agree to appear at the place and time mentioned: (driver's signature). *Important*—signing this ticket is an agreement to appear, not an admission of guilt. Failure to appear will result in warrant of arrest being issued." On the back there is printed: "Warning. Failure to appear in response to the instructions contained on a traffic citation after having signed an agreement to do so constitutes a separate violation of the law for which you may be penalized, regardless of the disposition of the original charge. (Section 742-A, Vehicle Code.)" The Oakland ticket declares that "Refusal to sign the citation compels the officers to take you into custody immediately until bail is furnished or you are taken before a magistrate." In Cleveland the space for the signature is headed "Personal Recognizance" and appears on the "spot-arrest" ticket forms used by motorcycle men, accident prevention men, and the mobile patrol. Note, lawyers, the accused signs what purports to be a recognizance *in the street!* A recognizance really is a bond and is defined, in the Law Dictionaries, as "An obligation of record, entered into before some court of record, or magistrate duly authorized, with condition to do some particular act; as to appear at the assizes, or criminal court."

In Miami the ticket contains a *waiver* and *plea* wherein the offender agrees that "I, the undersigned, do hereby waive a hearing in the Municipal Court, admit the above Violation, and agree to pay the Penalty Prescribed by Ordinance." Columbus, Ohio, does the same. All this is practical administration, but it is hardly legal. The only place to plead guilty is in court. The practice of accepting a plea out on the street is quite shocking to the lawyer.

But that is not all. Policemen now are actually issuing subpoenas! A subpoena is a writ or court order directed to a person and requiring his attendance at a particular time and place to testify as a witness. Usually subpoenas are served by the police at the order of a magistrate, or at least the court clerk. But so far as the law is concerned a policeman has no right to issue a sub-

poena. Nevertheless, it is done as ordinary routine in Memphis, the paper being headed "*Subpoena*" and summoning the witness to appear in court "and this you shall in no wise omit under the penalties prescribed by law Police Officer." If the police-subpoena fails the Memphis police then get a court-subpoena. The Knoxville police follow the same plan and it is a growing practice. Several cities disguise these subpoenas by calling them "witness notice" or "notice to appear." At the scene of a Detroit accident witnesses are handed blue or pink official-looking slips, headed "*Recorder's Court, Traffic & Ordinance Div.* You are hereby notified to appear at Room 1800 Barlum Tower, on 19... at 10:30 A.M. in the case of the People vs. (Signed) officer." The Detroit police frankly recognize the invalidity of this slip and use it "as a subpoena until such time as witnesses appear in Court and then a *bona fide* subpoena (exhibit "A") is issued prior to their testimony being taken."

The police say, "Suppose it is illegal. It saves plenty of time and trouble. If we issue it as a witness notice and the party comes in, well and good. If he does not, no one has been harmed and we can get a real subpoena. You know how hard it is to get people into court. Lots of them will talk at the accident scene but hate to spend the time to come to court. We just bluff them into coming by these phoney subpoenas—but most of them *do* come in. It works." The only answer to that is, "It is illegal." But the inevitable reply is, "Well, what of it?" Yes, what of it? Still, the lawyer is offended and rather horrified by this practice, justifiable though it may be.

Many of the forms of the summons used by the police show a woeful lack of knowledge concerning the law of arrest. Many people and seemingly many policemen think that the party "ticketed" has been arrested. That is not true as the summons was devised as a means of avoiding actual arrests. In some Illinois cities "Arrest Notices" are used and then they allow fines to be paid by mail. But whenever a real arrest is made the officer is required by statute to take the offender at once before a magistrate—a procedure quite different from the convenient mailing of fines. Some California cities have "Arrest Citations" which are nothing but ordinary summonses. Toledo uses an "Arrest Notification" which appears to be just another summons. Des Plaines, Illinois, uses both "Arrest Notification" and "Arrest Notice" on tags when no arrest is made. Remember, an arrest is a serious thing—

for the officer, too, although the Everett, Washington, ticket reads "You are released through courtesy." Civil liability for false arrest attaches as soon as the citizen's liberty is wrongfully restrained. These forms should be changed to protect the men on the force if for no other reason. Calling them arrests, when they are not, unnecessarily adds to the policeman's uncertain position. Discharged persons are tempted to start *false arrest* suits.

And what threats are used to make the ticket effective! All of them indicate that ignoring them will cause arrest warrants to issue. We need not go into all the various devices to scare the citizen into showing up but must refer to the Buffalo form: ". . . and upon failure to appear before the return date to avail yourself of this privilege, the case will then be put on Traffic Court Calendar and if you fail to appear on return date you are liable to a fine of fifty dollars or imprisonment of not exceeding ten days or both." The trembling recipient of this legal document probably will think that he must at once rush down to the City Court, or be fined *fifty dollars* and spend *ten days in jail*. The Evanston ticket, which seems to be designed to touch Evanstonians in a most sensitive spot, the pocketbook, concludes, "Failure to comply . . . Will Result in a Warrant for Your Arrest, Which May Entail Extra Cost for You."

Complaints for Warrants

Suppose a moving violator is arrested. Then what? He may be taken to the station and "booked" if it is an ordinance violation. If it is a State Motor Vehicle Law violation, it is at least a misdemeanor and prosecution will be based upon a complaint sworn to by some injured citizen or upon the information of the prosecuting attorney. Suppose the offender is not apprehended but has been identified. Then a complaint may be made before a judge (magistrate) and a warrant will be issued for his arrest. When he is brought in he faces prosecution based upon the complaint or on information written out by the prosecutor. You would expect some uniformity in this simple nation-wide bit of criminal procedure. But it is not so. A bewildering variety of documents are used by the police and magistrates' courts in getting the wheels of justice moving.

To better distinguish the sworn complaint from the request that a warrant be issued, the latter is properly called an affidavit in some cities. Cleveland has an affidavit form wherein the accused personally comes before the clerk of court and "deposes and says

that . . . and further deponent says not; contrary to the form of an Ordinance of said City in such cases made and provided." Columbus uses a similar form with the warrant printed on the back all ready to be served by the officer. Toledo and Cincinnati use the same though they are printed and worded differently in minor details. The Rockford form is called a "Complaint and Affidavit" and the complainant concludes: "Therefore he prays that said defendant may be arrested and dealt with according to the provisions of said ordinance." The Buffalo application for a warrant has a blank to show the residence of the accuser. And he concludes: "Wherefore the said complainant prays that a proper warrant may issue according to law, touching the premises [sic]." Los Angeles has a special complaint for police officers and another form for citizens, designed primarily to obtain information to be used later by the prosecutor at trial. Miami uses an affidavit form, A-155, for the "informant" to sign and swear to before the city clerk. We find thirty-three different offenses completely described so that about all the informant needs to do is to sign his name. Blank warrants are clipped to each affidavit. In addition, form A-220 covers several other crimes. It is interesting to note that the warrants attached thereto read: "Whereas, there is cause to believe that said complaint is well founded; These are, therefore, to command you forthwith to arrest the said and bring before me to be dealt with according to law." Note that courts have held that such forms completely filled up in advance do not represent a legal complaint on the complainant's own personal knowledge and belief. The Saginaw complaints are signed by the City Attorney and directed to a Justice of the Peace. Other cities have forms for police officers to use in signing as complaining witnesses. Lincoln has a splendid form where the blank warrant is printed on the same sheet as the affidavit and perforated so as to make it easy to tear off and serve.

The Berkeley affidavit (complaint) for warrant because of ordinance violation reads in part: "That said Ordinance now is in full force and effect in the City of Berkeley. That Section 2 of said Ordinance declares any violation of said Ordinance to be a misdemeanor." Notice this carefully. Can a city create a crime? Crimes are felonies or misdemeanors and a state legislature cannot delegate the *law making* power to a city. Can Berkeley declare that the violation of its *ordinances* is a state criminal offense? If it can legally do this, then strange things have happened in California.

Concerning strange things in California the reader will be intrigued by the San Francisco Notice from the Municipal Judge, that a warrant has been issued and will be served "unless the fine assessed by the Court in the amount of \$. is paid within five days from the receipt by you of this Notice." We always thought a warrant when issued commanded instant service.

Complaints for Prosecution

The Traffic Institute advocates: "When an investigation of an accident yields evidence that a traffic law has been violated the police themselves file the complaint against the suspect. This may seem an unimportant detail, but it is fundamental to successful investigation work because the victim often is only too willing to withdraw the legal action he may have instituted as soon as he has received a satisfactory settlement of his claims for damages." The Institute suggests this wise procedure even though the policeman was not "the injured party" and even when he was not an eye witness. But seldom do the forms provide for this intelligent practice.

In Fort Wayne the City Attorney signs the complaint for ordinance violation and the county prosecutor signs the information for a state offense. In Dallas the forms provide for the assistant city attorney's signature. The Knoxville *warrant* is used as a basis of the prosecution as indicated by the blanks on the back reading, "In this case I find the defendant of the charge in the warrant and City Judge. Fine \$" It is queer, is it not, to find a *charge* of crime in a *warrant*? The Denver sworn complaint is made out in the form of a dun: "The above-named Defendant to *The City and County of Denver, Dr.* To Dollars for a violation of the Municipal Code of the City and County of Denver, Section Article Chapter" A card is used in Oakland, and Evanston and other Illinois cities use a Quasi-Criminal Complaint and Information signed by the complaining witness. To be quite frank, the practice in many cities is to prosecute ordinance violators without any "legal" papers. The offender is "booked" and then before the magistrate he hears the charge orally pronounced and is asked for his plea. When he pays up he walks on out, and in many cities no record is kept of any of these proceedings!

In line with the Traffic Institute's suggestion we would advocate the creation of a standard form to be used by all traffic policemen

as a means of making an exact charge of a *quasi*-criminal or criminal offense. This paper should be signed by the policeman and should state the essence of the violation. Triplicates should be used so that the nature of the offense and judicial outcome may be recorded and used against recidivists and by safety statisticians. Today, we find that enforcement figures are confined almost entirely to the arrest side and little can be learned from the prosecution side.

Records

The Traffic Institute time and again has drawn attention to the necessity for compulsory reporting of accidents and it is refreshing to find cities like Cincinnati, Chattanooga, Knoxville, Columbus, Buffalo, and Denver, and many others, using the standard Accident Report Card, the Driver Record Card, and the Hit-and-Run Record Card which are set out in the Institute's Bulletin, "Accident Prevention Bureaus in Municipal Police Departments." The old adage, "In knowledge there is power," is nowhere more appropriate. For example, what good is a warning tag with the threat of later arrest unless duplicates of the warnings are carefully filed and kept up to date? What good is a superficial accident report unless it contains enough information to enable us to profit by experience?

An interesting bit of information comes from one of the Nation's leaders in safety, Saginaw, Michigan. Whenever an out-of-town violator fails to appear to answer the charge a report is filed in the office of the Secretary of State. The State Police then seek to locate him and his driver's license is "picked up" until his case is disposed of. In case he cannot be found a "flash card" is placed in the drivers file maintained at the Capitol. Eventually, when he seeks a new license it will be disapproved until he settles with Saginaw—a very effective scheme, it seems.

Some cities now are using a standard record for persons charged with drunken driving. The Denver intoxication report card, for example, has blanks for complete information, the blanks to be filled out by the arresting officer. Such information should be of great value to the prosecutor at trial, *e.g.*, "Are you taking medicine?..... If so, what?..... How much sleep did you get last night?..... Today?..... Have you been drinking since the accident?..... What?..... How much?....." Anyone can see that honest answers given immediately to these questions might forestall a made-up defense at later trial. On the

back of the card are places to check, *e.g.*, “*Mental State: Polite—Excited—Impolite—Reserved—Stupefied—Dull—Silent—Hilarious—Talkative—Sarcastic—Insulting—Combative—Delirious.*” Other tests to be checked are Breath, Color of Face; Clothes, Unusual Actions, Eyes, Balance, Walking, Speech, etc. If such a card is properly filled out it would just about win the case against the drunken driver.

The Chief Clerk of the Los Angeles Traffic Department, Municipal Court, keeps records of the date of the offense, name of offender, address, operator’s license number, vehicle license number, section number of the law or ordinance violated and the serial number of the ticket. This data is placed upon cards and arranged alphabetically just as the names in the telephone directory. The cards are placed upon metal sheets holding three hundred cards and these sheets are arranged upon rotating axles, each stand holding one hundred sheets. Altogether the combined indexes hold three hundred thousand cards. The history of any violator can be obtained within less than a minute. This data arrangement spots the recidivist at once, as the cards are constantly up to date; it can be used in graduating the amount of bail; it will assist the judge assigned to the case in many ways; and as a means of eliminating the potentially dangerous operator it is unsurpassed.

Orders

Los Angeles and several other cities sometimes use a triplicate document, which is presented to its citizens, reading: “You are directed to appear at the Los Angeles Traffic School commencing on evening (month, day, year), atM., in room No. of the Belmont High School, 1575 West Second Street, Los Angeles. You will attend at least *five* periods of the class and take your examination on the *sixth*. Absences or lateness at class will result in enforcement of the judgment which is pending in your case. Full compliance with the terms and conditions of probation or suspended sentence, and a favorable report from the Instructor of the School will satisfy the judgment of the Court.

.....

Judge of the Municipal Court.

I have read the above and agree to all the conditions therein contained.

.....

Defendant.”

Fines do not prove effective with some people, especially the high-school sons of rich fathers. This illegal procedure of scaring the offender into traffic school probably is of much more utility. Denver has adopted a "Cooperative Plan" which suspends the fines of non-accident driving offenders but "should you receive another such ticket while using your current year license plates, it will be necessary for you to pay the scheduled fine on the second violation, together with the fine which has just been assessed and suspended." Note first, that it does not merely grant tolerance to parking violators but applies to *moving violators*. Second, it is effective only under the suspended sentence provision.

Detroit has an order which is supreme in its field. When the traffic school graduates its students out under the wheel again, they are ordered to take the "*Safety Pledge*": "1. I will drive more *carefully*; 2. I will not pass a car unless I have 100 yards vision ahead"; etc., ending up with, "8. I will be a good sportsman and treat other drivers courteously." While this smacks of the W.C.T.U. perhaps it is a good idea. At least, it can do no harm.

Wichita, Kansas, in 1937 adopted a "no arrest" policy applicable to all still violations and all moving violations except accident cases, drunken drivers and those whose records showed persistent delinquency. Wichita reported great safety success as a result, although the income from fines was cut in half. Other towns like Saginaw or Evanston may arrest all moving violators and report great success likewise. The virtue of the Evanston system is that it is lawful and consistent; it leaves policy forming to the City Council. The virtue of the Wichita plan is that it leaves traffic problems in the hands of the police, where they belong, if the police are trained to assume such responsibility. Of course, the cities following the no-arrest plan use all manner of "educational" devices.

Courts also attempt to educate. Some judges issue orders that offenders must write an essay on traffic safety, visit the morgue, take flowers to the broken bone department of the hospital, quit driving for a time, and so on. All such orders are illegal but are generally complied with because the offender prefers to obey rather than be punished in the regular way. As a lawyer the writer is opposed to *in personam* orders under the threat of lifting the suspension of a fine or sentence. It is a backward step in the science of judicature. Long ago, before probation was developed, we had the same practice in the criminal courts in ordinary criminal cases. All sorts of silly things were required by silly judges, or else . . .!

A wife beater's sentence would be suspended so long as he kissed his wife every day before breakfast; a person guilty of assault and battery would be kept out of jail, if for two years he never missed Mass on Sundays, *etc.* The judges yearned to individualize punishment but there were no standards, no supervision, no way to prevent the judge's own aberrations from coloring his judgments. Granted that we need more "education" of the motorist, bench orders are too erratic and sporadic to be really educational.

Conclusion

The papers we have studied all come from the better police departments. No criticism of anyone is intended. However, we find that (1) administrative practices, apparently "illegal," are taking the place of the law; (2) but these practices are not yet established and are still in the stage of experimentation, testing and appraisal; (3) arrest as known in the criminal law is breaking down; (4) the threat of arrest, fine, or jail makes possible a haphazard "educational" policy; (5) the forms used by the police are in need of standardization and modernization.

Here is a beckoning field of research for some organization, such as the Traffic Institute or the National Committee on Traffic Law Enforcement, to undertake. Materials should be gathered from all cities; questionnaires should be undertaken to find out what tolerances are used in each large city; conventions of traffic enforcement officers should be held for the interchange of ideas and forms; laws must be changed to give legal recognition to the administrative character of traffic law enforcement; many traffic offenses should be removed entirely from the domain of the criminal law; and above all the *policies which are most useful socially should be determined* and then taught throughout the country. With interstate motor travel so common, the need for uniformity in traffic laws is becoming more and more acute. Since enforcement success is dependent upon the forms used as well as the instruction and training of traffic officers, it is high time that the matter of the proper "tags" to use be studied. That requires, of course, the sober evaluation of police techniques in traffic cases.