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ANALYZING THE FEASIBILITY OF THE ADMINISTRATIVE ADJUDICATION OF TRAFFIC OFFENSES VOLUME I: TECHNICAL SUMMARY

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16. Abstract This report provides information for use by local governmental analysts in conducting feasibility studies of the administrative adjudication of traffic offenses. The report describes experiences in other jurisdiction, and discusses issues that would normally be addressed in a benefit-cost analysis of alternative adjudicative systems for traffic offenses. These include basic arguments for administrative adjudication, legal and constitutional issues, anticipation of special interest group concerns, the monetary and nonmonetary treatment of benefits and costs, and the treatment of traffic safety issues. Methods of presentation of study findings and documentation for public information are also discussed along with tactical issues associated with planning and implementing a study. It is published in two volumes. Volume I is a 29 page Technical Summary. Volume II is the full report of 166 pages. JAN 1981 ACQUISITIONS					
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ABOUT THE AUTHORS

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Thomas J. Novi is responsible for the program planning and evaluation activities of the California State Department of Motor Vehicles. He holds an M.B.A., was project manager of the California administrative adjudication feasibility study, and currently directs the research and development activities of the California Department of Motor Vehicles in administrative adjudication of traffic offenses.

In July 1970, the New York Department of Motor Vehicles (NYDMV) pioneered development of a new approach to handling traffic offenses in New York City--an Administrative Adjudication Program (AAP).¹

Favorable first-year results of the program were reported in the October 1971, issue of Traffic Safety by Vincent L. Tofany, then Commissioner of NYDMV and now president of the National Safety Council. Taking the adjudication of traffic infractions out of the judicial realm, Tofany said, proved of greater convenience to the motoring public who received traffic citations and improved efficiency in enforcement and licensing agencies.

Since the first successful experiment, 18 jurisdictions have decriminalized traffic offenses so that they may be adjudicated administratively. Among these jurisdictions are the State of Rhode Island and the City of Seattle. In the July 1977, Report on Administrative Adjudication of Traffic Infractions, the National Highway Traffic Safety Administration (NHTSA) declared that the projects in Rhode Island and Seattle had proven superior to judicial adjudication in a number of areas.

The Rhode Island administrative adjudication program, a project funded in 1974 under the NHTSA's Special Adjudication for Enforcement (SAFE) program, showed many of the same benefits as the New York system. Edward J. Walsh, the Governor's highway safety representative, reported that the AAP "...has reduced the court caseload, permitting more time for misdemeanor cases and a higher level of enforcement of more serious traffic violations such as driving under the influence." In addition, Rhode Island led the Nation with the lowest number of fatalities per 100 million miles driven in 1975.

¹The term "administrative adjudication" refers to a system in which the adjudication process is administered by an agency outside the judicial branch of local or State governments.

Seattle's SAFE project, funded in 1973 by NHTSA, was a modified judicial² approach involving a partnership between the Seattle Municipal Court and the Washington Department of Motor Vehicles.

The State of California's Department of Motor Vehicles prepared a feasibility study of an AAP for its State legislature in 1976. This study found that "administrative adjudication would be economically attractive in California," but the recommendation has not been acted upon yet.

As pressures mount for improved governmental productivity and as evidence of benefits are reported from various jurisdictions, interest in the AAP will undoubtedly increase. But it is obvious that specific local conditions must be considered for each individual jurisdiction. A compelling case for the new system can be made only by analyzing the laws, court costs and procedures, and special interest group concerns, and then presenting strong evidence that benefits will accrue to the particular population and its government.

Analysts responsible for assessing the attractiveness of an AAP for their jurisdictions and planning feasibility studies can refer to a growing body of literature and can receive answers to some questions from the National Highway Traffic Safety Administration in Washington, D.C.

Initially, at least, the following points will need to be demonstrated, if a jurisdiction is to show interest in changing its system.

- o Administrative adjudication would improve the detection and rehabilitation of the problem driver, thereby improving traffic safety.
- o Costs of adjudicating traffic offenses administratively would be less than the traditional judicial method.

²The terms "modified judicial," "para-judicial," and "quasi-judicial" refer to systems in which an appointee of the court, who is not a judge, performs the adjudication, and the adjudication process remains directly under the administration of the court.

- o Excessive backlogs of traffic cases would disappear, and law enforcement and prosecution would improve.
- o Administrative adjudication would be more convenient to the motoring public.
- o An administrative adjudication program might improve the image of the courts.
- o Administrative adjudication would increase revenue to local governments by increasing detection of multiple offenders and decreasing the number of scofflaws.
- o Administrative adjudication would improve the effectiveness and reduce the cost of State driver licensing and driver control operations.
- o Judges in the jurisdiction may perceive the adjudication of traffic offenses as a professionally unrewarding activity.

It is important to recognize that all the benefits associated with administrative adjudication can, in theory, be achieved by procedural or administrative changes in the courts themselves. For many jurisdictions, however, it would be less expensive to reorganize the adjudication of traffic offenses under an administrative system than to attempt the same changes within the court system (see exhibit 1). In addition, the change from a judicial to an administrative system might involve fewer complexities than making a change within the court system, and it might avoid inertia and a natural resistance to bureaucratic change.

In summary, the problem facing the analyst is to test the hypothesis that an effective form of adjudication exists, that its implementation is financially more attractive than making equivalent changes in the existing court system, and that another system can provide equivalent or better treatment of traffic offenders. Eight steps will help the analyst determine the validity of this hypothesis.

EXHIBIT 1

Typical Manpower Requirements Based Upon A Jurisdiction
Which Handles an Annual Caseload of 150,000
Minor Traffic Offenses*

Personnel	Number	Relative Salary Level	Relative Level of Effort	Relative Cost
JUDICIAL APPROACH				
Presiding Judge	1	\$37,500	25%	\$ 9,375
Judge	3	37,500	100%	112,500
Court Clerk	3	10,000	100%	30,000
Bailiff	3	10,000	100%	30,000
Cashier	3	12,500	100%	37,500
Pres. Judge's Secretary	2	7,500	100%	15,000
Judge's Secretary	1	10,000	25%	2,500
Secretary	3	8,750	100%	26,500
Total Estimated Expenditure				\$263,125
MODIFIED JUDICIAL APPROACH				
Judge	1	\$37,500	25%	\$ 9,375
Para-Judicial	3	30,000	100%	90,000
Court Clerk	1	10,000	25%	2,500
Court Clerk	3	10,000	100%	30,000
Bailiff	1	10,000	25%	2,500
Bailiff	3	10,000	100%	30,000
Cashier	2	7,500	100%	15,000
Judge's Secretary	1	10,000	25%	2,500
Secretary	1	8,750	100%	8,750
Total Estimated Expenditure				\$190,625
ADMINISTRATIVE APPROACH				
Supervising Officer	1	\$25,000	100%	\$ 25,000
Hearing Officer	3	23,750	100%	71,250
Hearing Room Clerk	3	8,750	100%	26,250
Information Clerk	1	7,500	100%	7,500
Cashier	2	7,500	100%	15,000
Administrative Assistant	1	11,250	100%	11,250
Total Estimated Expenditure				\$156,250

*Source: Effective Highway Safety Traffic Offense Adjudication,
National Highway Traffic Safety Administration, June, 1974,
with costs increased 25% to more accurately reflect conditions at the time of this writing.

Step 1. Assess the problems in the existing system. If it cannot be demonstrated that significant problems exist, a feasibility study is merely an academic exercise. Moreover, if no immediate crisis exists and there is no recognition of an emerging need for change, a feasibility study is not likely to pay dividends.

In New York, the need for change was obvious. The alternative of an overloaded municipal court system collapsing under the weight of its traffic case-load was unacceptable to everyone.

In Rhode Island and Seattle, the need was not as apparent. It took strong political leadership with a great deal of foresight to secure available Federal funds to form a new system that ultimately proved more effective and efficient.

A typical situation is more likely to parallel the California experience. There, local urban county governments were concerned about the cost of a growing judiciary. Legislative reforms of the court system were being proposed. The Governor was vetoing an unprecedented amount of legislation to provide counties with new judgeships. And the State DMV was increasingly concerned with its inability to monitor, rehabilitate, and take action against drivers with poor or severely deteriorating driving records. So there was a willingness to consider change; nevertheless, some resistance was evident at the legislative level, because there was no immediate crisis and objections from the legal community were being voiced.

Step 2. Establish the objectives of a new system. Principal objectives are, of course, to reduce court costs and congestion in court operations and to improve traffic safety. Other objectives to be considered are outlined in exhibit 2.

Step 3. Decide how many alternative system concepts should be included in the analysis. One option is to compare the proposed system with the existing system. This approach has the advantage of providing clear-cut focal points,

EXHIBIT 2

Checklist for System Objectives

	Primary Objective			Primary Objective	
	Yes	No		Yes	No
<u>Traffic Safety</u>			<u>For Other State and Local Government Activities</u>		
- provide for new driver improvement programs	<input type="checkbox"/>	<input type="checkbox"/>	- improve police productivity	<input type="checkbox"/>	<input type="checkbox"/>
- make current programs less costly	<input type="checkbox"/>	<input type="checkbox"/>	- improve public defender and prosecutor productivity	<input type="checkbox"/>	<input type="checkbox"/>
- make current programs more effective	<input type="checkbox"/>	<input type="checkbox"/>	- improve the efficiency of other driver control systems (driver licensing, etc.)	<input type="checkbox"/>	<input type="checkbox"/>
- improve detection of problem drivers	<input type="checkbox"/>	<input type="checkbox"/>			
- reduce scofflaws	<input type="checkbox"/>	<input type="checkbox"/>			
<u>Court-Related Issues</u>			<u>For Local Governmental Entities</u>		
- reduce or slow growth in judicial positions	<input type="checkbox"/>	<input type="checkbox"/>	- increase net revenues	<input type="checkbox"/>	<input type="checkbox"/>
- reduce or slow growth in clerical positions	<input type="checkbox"/>	<input type="checkbox"/>	- decrease expenses	<input type="checkbox"/>	<input type="checkbox"/>
- reduce backlog			<u>Overall Fiscal Constraints & Objectives</u>		
- free judge and clerical time for other work	<input type="checkbox"/>	<input type="checkbox"/>	- system must pay for itself	<input type="checkbox"/>	<input type="checkbox"/>
- reduce time for case disposition	<input type="checkbox"/>	<input type="checkbox"/>	- system must generate more net revenue than current system	<input type="checkbox"/>	<input type="checkbox"/>
- improve image of court	<input type="checkbox"/>	<input type="checkbox"/>	- no individual jurisdiction may suffer a decrease in gross (net) revenues	<input type="checkbox"/>	<input type="checkbox"/>
- remove unliked judicial activity from court	<input type="checkbox"/>	<input type="checkbox"/>	<u>Other Constraints</u>		
<u>For the Public</u>			- system must be administered in the courts	<input type="checkbox"/>	<input type="checkbox"/>
- reduce time for case disposition	<input type="checkbox"/>	<input type="checkbox"/>	- system must be administered by agency with driver licensing authority	<input type="checkbox"/>	<input type="checkbox"/>
- reduce expense (time & money) in contesting cases	<input type="checkbox"/>	<input type="checkbox"/>	- no constitutional changes must be required	<input type="checkbox"/>	<input type="checkbox"/>
- improve public view of adjudicative process	<input type="checkbox"/>	<input type="checkbox"/>			

but it may seem too narrow to critics, particularly if no options or possible modifications to the new system are included in the study.

Another approach is to develop several alternative systems--say, a modified judicial approach as well as a strictly administrative approach. This scheme lessens the likelihood that the final report will be found inconclusive, but it has its disadvantages in terms of time and expense.

Interim agreements on the exact features of the systems being compared should be obtained, especially when the study is being performed in response to a specific legislative request.

Step 4. Point out special features of the new system. These include features related to law enforcement; options open to the defendant; case preparation and decisionmaking; sanctions and reviews; traffic safety; administration and organization; and financing and disposition of revenues (see exhibit 3).

Step 5. Consider which issues to address and how to measure input before collecting data or doing other analytical work. Some benefits, such as freed judge time or reduced court backlogs, can be quantified but not in monetary terms.

The utility of converting the word "substantial" to either a personhour or dollar figure may not be sufficient to warrant the cost of analysis, and it probably shouldn't be done unless the information is crucial for members of the decisionmaking body who will use the study. Also, a quantitative statement may be irrelevant if the local government cannot actually realize dollar savings.

Certain factors are critical in determining whether these issues should be addressed in a nonquantitative, quantitative, or monetized fashion--for example:

- o To what extent is it important that the system be monetarily self-supporting?

EXHIBIT 3

Initial Checklist for System Features

1. Features Relating to Law Enforcement and Citation Issuance:

- What types of offenses are covered by the system?
- What will the officer tell the motorist?
- What is written on the citation?
- Is there a provision for the motorist to obtain information by telephone?
- How are out-of-state or out-of-area offenders handled?
- What are the legal implications of stopping and citing the motorist?

2. Features Relating to Options Open to the Defendant:

- How is a hearing scheduled?
- Under what conditions will the police officer be in attendance at the hearing?
- Can the citation be paid by mail?
- Under what conditions can the defendant be represented by an attorney?
- How is appeal handled?

3. Features Relating to Case Preparation and Decision Making:

- What are the qualifications of the hearing officer?
- What sort of transcript will be prepared and how will it be retained?
- What information on the defendant's record will be made available to the hearing officer prior to a decision?
- What documentation will the hearing officer prepare?
- What discretion will the hearing officer have?

4. Features Relating to Sanctions and Reviews:

- What review procedures will be provided:

- What will be the underlying philosophy of the sanction schedule - driver improvement program assignment, maintenance of revenues, etc.?
- How rigid will the sanction schedule be?
- Who establishes the sanction schedule?
- Is the sanction schedule uniform statewide?
- How are local priorities reflected in the sanction process?

5. Features Related to Traffic Safety:

- How will the driver's prior record be used?
- What special driver improvement programs will be incorporated?
- What will be the qualifications of driver improvement personnel?
- Who will supervise, monitor, and review the operations of the driver improvement programs?
- What provisions will be made for evaluating the effectiveness and long-term costs of the driver improvement programs?

6. Features Related to Administration and Organization:

- Which agency will administer the system?
- What are the cooperating roles of other agencies?
- How will the administering agency collect monies and disperse monies?

7. Features Related to Financing and Disposition of Revenues:

- What is the source of funds for operating the system?
- Will the system guarantee no loss of revenues to local governmental units?
- Must the system pay for itself?
- Must the system be more economical than the present system?

- o Are there data showing the incremental changes in direct and indirect costs in the courts resulting from the removal of traffic offenses?
- o Is more than one jurisdiction to be covered by the proposed new system? If so, should cost estimates be done on a jurisdiction-by-jurisdiction basis or for the State as a whole?

The latter question was important in California, where there was compelling evidence of an economic improvement for the State but some evidence that certain jurisdictions might suffer a net loss in revenue under the new system.

If a variance in benefits and costs between local jurisdictions is an important consideration, there are at least three ways to deal with the problem without making a complete evaluation. They are as follows:

- o Test the hypothesis that all jurisdictions will benefit, if unevenly.
- o Redesign the system through revenue reimbursement guarantees so that no jurisdiction will suffer.
- o Defer the question to followup studies or demonstration projects prior to a commitment to a full system.

California used the third approach.

Step 6. Use legal research specialists to examine two principal Constitutional issues--due process and separation of powers. The California study used the services of the Institute for Administrative Justice of the McGeorge School of Law for this purpose.

Whether the administrative adjudication system affects a person's right to due process under the U.S. Constitution or the State's constitution will depend on the exact nature of the procedures for notifying a defendant of his or her rights, the processing of the case, the latitude available to the adjudicator in applying sanctions, the availability for appeal to the courts, and similar issues.

The second issue--separation of powers--deals with whether the AAP does or does not conflict with the separation of powers between the executive and judicial branches of State government. Some sort of legislative or constitutional changes may be required, unless traffic offenses are decriminalized so that they can legitimately be considered outside the jurisdiction of the court. (Elaboration on these important legal issues appears later in this paper.)

A review and understanding of administrative law is relevant to this aspect of research, and there is a substantial volume of literature on the subject.

Initial legal considerations are the following:

- o Types of offenses that can be covered
- o Time and method of advising of rights
- o Representation at hearing
- o Recording of proceedings
- o Procedures for appeal
- o Types of sanctions that can be applied
- o Discretion of hearing officer in applying sanctions

Step 7. Make a list of persons and entities that will be affected by the system (or that perceive themselves as being affected) at the outset of the study. The criteria these special interest groups use for judging the desirability of a new system may be quite different from those of the entity requesting the study. Considering the benefits and costs involved in serving these groups will insure that the scope of the feasibility study is adequate. The following are some of those special interest groups:

- o Judiciary or para-judicial personnel who hear traffic cases
- o Clerical personnel of the court, including employee representative groups
- o The public

- o Traffic offenders
- o Public and private driver improvement groups
- o Law enforcement agencies
- o Public defenders
- o State and governmental entities that deal with driver licensing and control
- o Highway users: organized labor, common carriers, auto clubs, and insurance industry representatives
- o Appropriate legislative bodies (from the standpoint of changes in law that must be achieved to implement the system)
- o Various other entities of State and local governments (from the standpoint of costs and changes in revenues)

Special interest groups that have expressed interest in administrative adjudication are the American Civil Liberties Union, the Teamsters, and State Bar associations.

Step 8. Document the scope of the study before making final decisions on system features and beginning the analysis of benefits and costs. That is, array the expected impacts of a new system against the private and public entities and special interest groups affected.

Some of the impacts to be considered are the following:

- o Changes in judicial workload (various direct monetary and service-level impacts)
- o Changes in clerical workload in the courts (various direct monetary and service-level impacts)
- o Changes in public defender workload
- o Changes in local control over actions, emphasis, and operation in adjudicating process

- o Changes in recidivism
- o Changes in accident frequency or severity
- o Changes in time spent by defendants in the entire process of clearing citations
- o Changes in police regular time spent on adjudication
- o Changes in numbers of warrants for scofflaws
- o Changes in public's attitude toward the traffic adjudication process

The legal issues to be studied need some elaboration.

Forty years ago the Wickersham Commission, appointed by the President of the United States, recommended that minor traffic offenses be decriminalized and handled through administrative processes.

Justice Douglas, in a Supreme Court decision (Argesinger v. Hamlin, 407 U.S. 25 (1972)), stated:

How crimes should be classified is largely a state matter... One practical solution to the problem of minor offenses may well be to remove them from the court system.

Similarly, the American Bar Association's Special Committee on Crime Prevention and Control has concluded that

The handling of...non-serious offenses, such as housing codes and traffic violation, should be transferred to specialized administrative bodies.

Today, many States have decriminalized minor traffic offenses, but adjudication remains under the courts in nearly all States.

Seattle's quasi-judicial system uses specially trained lawyers to adjudicate infractions, counsel motorists, impose fines, suspend licenses, and require attendance at driver improvement clinics. However, administration of the adjudication process is retained by the judiciary rather than an administrative agency.

North Dakota has a quasi-administrative system.

In California's study, the offense would normally be processed under the administrative system, but an offender may still elect to have the hearing in regular court.

New York's strictly administrative adjudication system has been instituted in New York City, Buffalo, and Rochester.

Rhode Island's administrative adjudication program applies statewide, with the exception of municipal violations in the cities of Providence and Pawtucket.

It is important to know that when a jury trial is available or jail sentences can be imposed, an offense falls under the jurisdiction of the criminal courts. Therefore, the first step in the implementation of administrative adjudication should be the decriminalization of those traffic offenses to be included in the system. Only those decriminalized offenses may be included.

The two important issues, as already stated, are the Constitutional guarantees of due process and separation of powers. Due process includes the following:

- o The right to trial by jury (not included in AAP's)
- o The right to appointed counsel (not included in AAP's)
- o The nature of the evidence--(civil proceedings require "clear and convincing" evidence; criminal cases require evidence that is "beyond a reasonable doubt.")
- o The nature of sanctions--(AAP's do not allow jail as a sanction but would permit "monetary penalties" based on the driving record.)
- o The grounds for judicial review (appeal)--(an administrative system must allow an aggrieved motorist the right to appeal any adverse determinations to the judicial system.)

Separation of powers has two principal objectives:

- o Fairness for the citizen when he or she deals with the government.

- o Diffusion of power among the several branches of Government to prevent the concentration of power in any one branch.

Appendix B of the full report provides additional information on the separation of powers issue.

For the analyst, the legal issues are paramount. Besides constraining the system design and dictating the detailed procedures that must be incorporated into the system, changes in law require considerable time and expense to execute. These costs must be taken into account in the analysis.

Psychological factors must also be considered. Because the strictly administrative adjudication system involves sudden and radical change, as opposed to the incremental changes involved in the modified forms of administrative adjudication, there will be natural resistance and opposition. Therefore, questions raised by special interest groups must be answered, and study findings, conclusions, and recommendations must be as complete and objective as possible.

Strong political leadership is imperative. California is a case in point. There, divergent interests seriously threatened the proposed administrative adjudication legislation, but the Governor's office asserted political leadership by using administrative adjudication as an example of the broad need for court reform, a need widely recognized.

J. Anthony Kline, Governor Brown's legal affairs secretary, commented in the Los Angeles Times (February 12, 1978) on the general frustration the Governor experienced trying to make significant improvements in the California judicial system.

"In 1976, after lengthy study, the Department of Motor Vehicles proposed the disposition of petty traffic violations be taken out of the municipal courts and placed in the hands of independent administrative hearings," Kline said.

"Such a step, which has been adopted by a number of other states, would not only save an estimated \$13 million per year, but would also create a more humane, accessible, and expeditious system of dealing with such cases. It would also relieve the courts of the huge volume of routine traffic matters that in some areas occupy almost 20% of the municipal judges' time.

"But," he declared, "it is the lawyers of this state...who have most aggressively frustrated efforts to secure progressive reform... Although the measure had the support of the three county governments involved, the Trial Lawyers Association opposed the bill and successfully bottled it up in committee."

He pointed out that the lawyers' argument was based on their fear that passage of the bill would undermine "the right to have one's day in court," but responded that "...anyone who has ever spent a day in traffic court in any metropolitan county must wonder why this 'right' deserves to be preserved."

It is clear, then, that the opinions and concerns of all affected interest groups should be sought early in the design and analysis process. This might be done by the use of an advisory group of representatives from the special interest groups, or by requesting that these groups perform a critical review of drafts of the study.

Some special interest groups and their concerns are elaborated below.

Attorneys are likely to be concerned with the use of legally trained but nonattorney hearing officers, who would be paid less than attorneys and who would be allowed to compete for hearing officer positions.

The judiciary, including court personnel, are likely to have mixed feelings about administrative adjudication. Some judges see traffic case processing as burdensome and unrewarding; others believe that traffic cases should be dealt with only in the judicial system.

In general, courts in urban areas are more supportive of new systems than courts in rural areas. Rural courts do not tend to be overloaded, and they tend to have a closer relationship with the people they serve than do urban courts.

Judges, court administrators, and court clerical staff are, of course, concerned that the number of judicial positions will be reduced and they will lose their jobs.

Highway carriers may be expected to support the administrative adjudication concept. The objectives of court reform and improved traffic safety are consistent with their interests. They are also likely to focus on service features that the new system offers, such as paying tickets by mail.

Commercial drivers, those who drive for compensation, such as truck drivers or taxi operators, could be expected to support the concept of a more convenient method of paying citations, coupled with the potential of improved traffic safety, but certain disadvantages may cause them concern. They may perceive, for example, that nonelected hearing officers will be more severe than elected judges in adjudicating infractions and applying sanctions.

In addition, the elimination of a system that permits the clearing of driving records may cause them concern. In Los Angeles, for example, the Teamsters Union operates a traffic court school program oriented to the commercial driver. Frequently a judge will allow a cited driver to participate in the program and, when the driver completes the program, dismiss the citation and clear the driver's record of convictions.

In the administrative adjudication system, similar driver improvement programs would be available, and fines forgiven or points cleared, but records would not be artificially cleared of the incident.

Driver licensing agencies will probably support the concept of administrative adjudication because it would enhance the total system of issuing driver's licenses, adjudicating infractions against the license, driver improvement, and control of the driving privilege. One economic benefit of an administrative adjudication system can be the combining of adjudication and driver improvement elements, in one hearing.

The Rhode Island and California systems combine a driver improvement session with the hearings. The Seattle court hearing officer refers the offender to a State driver improvement analyst in an adjoining room. New York, however, schedules separate driver improvement hearings.

Law enforcement groups tend to be conservative when faced with change. They can be expected to be skeptical, at least, and perhaps adamantly opposed to any changes in the traffic enforcement and adjudication system. Their concerns will probably focus on the public's image of law enforcement and the potential reductions in the peace officer's legal authority. They may prefer the "majesty of the courts" to the less formal administrative setting.

They may also be concerned that traffic offenses will be downgraded in the eyes of the public and that this may have a deleterious effect on traffic safety and the perceived authority of the peace officer.

These fears proved unfounded in New York and Rhode Island.

Peace officers may be particularly concerned that their authority in the areas of arrest and search and seizure will be diluted if total decriminalization of traffic infractions is accomplished. For this reason, California left its traffic offenses technically a crime.

Both the use of broadly based advisory committees and the dissemination of study drafts to special interest groups were part of the California feasibility study. As a result, the types of economic impacts were analyzed and expanded,

certain legal implications were emphasized in research, and public opinion survey instruments were modified.

Recommendations, as well as the content of the final report that emerged from the California study, were based in large part on issues raised by special interest groups. The following questions, which were raised by affected groups in California, should be anticipated and responded to in a feasibility study:

- o What information exists that demonstrates the need for a major change in traffic infraction adjudication?
- o What is the likelihood that the proposed change will be found to be fully Constitutional?
- o Why should the judgment of locally elected judges be replaced by civil service hearing officers?
- o What form of appeal would be available?
- o What would be the traffic safety implications?
- o Would a new bureaucracy be created? What should its relationship be to law enforcement and driver licensing agencies?
- o How would the proposed system be administered? How would it be operationally organized?
- o Should the changes be statewide or limited to urban areas?
- o How would court staff reductions be accomplished with minimal impact on employees?
- o How would the proposed system be funded? Would revenues to any governmental agency change as a result of the new system?
- o What would be the impact on commercial drivers?
- o What would be the qualifications of hearings officers? Would they be lawyers, or only legally trained?

It can be argued, reasonably, that an objective examination of issues requires that the study itself be conducted by a group independent of any agency that would have a self-interest in its outcome. This was not done in California; staff and consultants to the State Department of Motor Vehicles conducted the study. It may well be that the validity of the findings and the recommendations would have been considerably enhanced if an independent group had conducted the study.

Experiences in New York and California indicate that a pilot study of limited initial implementation would probably be more acceptable to decisionmakers and special interest groups than a final plan.

Designing the Feasibility Study

When actually designing the feasibility study, the analyst should keep in mind these five points:

- o Actual reduction in staff, though theoretically justifiable, may not occur. And, because benefits may result largely from deferring the creation of new positions, these must be analyzed over a period of years (no less than 5 years and no more than 20 years).
- o Freed time of judges and case backlog reduction will have an economic value to the community, but this cannot result in reduced expenditures unless the expenditures were previously planned.
- o Because the incremental savings resulting from removal of some fraction of an entity's workload are difficult to estimate, some approach to estimating these incremental costs and benefits should be carefully considered.
- o Stating benefits in terms of unit case-processing costs may not be persuasive alone, because overall expenditures may be higher when a new

function has been added and none of the costs of the old functions have changed.

- o There is little empirical evidence relating the form of adjudication to recidivism. The analyst must formulate arguments that the administrative adjudication system will provide improved treatment meaning rehabilitation of traffic offenders, if traffic safety is going to be claimed as a benefit.

An intrinsic part of the analyst's study is the impact on courts, police, prosecutors and defenders, and defendants. Some of those impacts, as estimated by study or demonstrated by administrative adjudication systems now operating, are discussed below.

The Courts

Here the analyst must consider reduction and deferral of judicial positions and freed judge time; reduction and deferral in clerical positions and freed clerical time; reduction of backlogs and case processing; and the attitudes of the judiciary toward the function of adjudication of traffic.

For the reduction, deferral, and freed time of both judicial and clerical positions, the analyst has the alternatives of attempting to make statements that are monetary, quantitative, or qualitative. Stating backlog reduction in monetary terms may be difficult. In the case of judicial attitudes, quantitative statements may be achieved by means of surveys (appendix D of the full report is a judicial attitude survey taken in California).

In the model used for the California feasibility study, it was estimated that the incremental cost of judicial position-years was approximately \$102,500 in 1976 (the base year selected for all monetary impact analyses). Results of using this unit cost figure were as follows:

- o Statewide savings due to the deferred creation of judicial positions would amount to approximately \$3.6 million during the 2-year period during which the system was being introduced.
- o Thereafter, savings due to the deferral of new judicial positions would average approximately \$4.5 million per year during the first 15 years of operation.
- o During the first 2 1/2 years of operation of the system, approximately 5.8 judge-years of time would be freed and made available for improving the level of service in the courts, for example, by reducing case backlog. The monetary equivalent of this time would be approximately \$650,000.

In California, no attempt was made to estimate the actual backlog reduction that could be achieved or its monetary benefits to the public.

Because the workload impact on clerical personnel in the California study was so great, it had to be assumed that numbers of personnel would actually be reduced as a result of the introduction of administrative adjudication.

Using a unit cost per clerical position-year of approximately \$18,500 led to the following statement of impacts for California:

- o During the first full year of operation, approximately \$10.8 million would be saved. This saving would increase to approximately \$16.3 million per year by the 5th year.
- o Savings would continue to increase, averaging approximately \$18.4 million over the period from the 8th year after implementation to the 15th year of the program.
- o During the first 7 years after program implementation, an average of the equivalent of \$3.3 million per year in nonjudicial personnel time would be freed for level-of-service improvements.

In New York, the nonmoving violations were transferred to the NYC Parking Authority at the same time their implementation of administrative adjudication went into effect. However, during the period of operation of these two systems, the traffic cases processed by the courts were reduced from 4.6 million in 1969 to about 87,000 in 1973.

There was a reduction of 18 judges and five courtrooms in New York City and 2 full-time judges and two courtrooms in both Buffalo and Rochester. Since the processing of parking violations involves relatively little judge time, it may be concluded that the changes in court workload and freed judge time are largely attributable to administrative adjudication.

The 2-year SAFE program in Seattle permitted the courts to maintain a manageable docket during a period in which there was a 25 percent increase in total court trials.

In Rhode Island, administrative adjudication freed the courts from a significant volume of cases, thus permitting other cases to be processed more quickly. It also allowed new functions to be added to the responsibilities of the District courts.

Police

As with court personnel, there could be a reduction in police positions in response to reduced workload, but it is unlikely. Benefits associated with police would depend largely on the degree to which the hearing process reduced police time in court appearances. In many jurisdictions, this activity accounts for a substantial portion of police overtime.

If it appears that no reduced costs will result from reduced overtime or deferred creation of new positions, even though theoretically justified, the benefits can be measured in other ways.

Changes in productivity measures can be asserted if the assumption is made that time spent in court is "nonproductive." Here, benefits are being expressed in terms of improved service levels, given the same expenditure of governmental funds, rather than in realizable monetary savings.

Models similar in structure to those used for judicial and clerical personnel may be used.

California's feasibility study estimated that benefits would be \$220,000 per year in realizable dollar savings because of reduced overtime, and an additional \$550,000 would be realized in improved service levels.

New York reported that police time in court was reduced by 50 percent because of the system change.

In Rhode Island, most of the police departments claimed significant manpower savings: the need for police prosecutors at arraignment of most traffic cases was eliminated; officers spent less time at contested court cases; clerical tasks were reduced because warrants were eliminated in most traffic cases, and also because capias (a writ commanding an officer to take a specified person into custody) were eliminated as the followup to no-shows.

Prosecutors and Defenders

As with the police, it may be unlikely that there would be any deferral in the creation of prosecutor positions as a result of a system of administrative adjudication.

In this case, the benefits are not seen in terms of realizable dollar savings but in terms of the improved service level--stated in terms of personhours added, the monetary equivalent of the personhours added, or by using a productivity measure.

Defendants

Apart from improved attitudes toward the adjudication process and improved driving behavior, the effect of an administrative adjudication system on the defendant could conceivably include the following:

- o Changes in the amount of money paid for sanctions
- o Changes in the time spent and fees paid for attending driver improvement programs
- o Changes in time and cost of appearances

The California feasibility study estimated that gross revenues generated under the proposed administrative adjudication program would exceed those generated under the present system, because of the reduced numbers of scofflaws and an improved detection of multiple offenders. The increased amounts were estimated at about \$1.5 million per year. This cost is, of course, borne by defendants.

That study estimated, however, that there would be a reduction in hours spent in driver improvement schools, as well as in time and cost of traveling to the schools, and fees paid. It was, therefore, estimated that in the aggregate these reduced costs would exceed the monetary sanctions, thus yielding a net economic benefit to a California defendant.

Implementing Agency Costs

The costs of implementing an administrative adjudication agency can be divided into five categories:

- o Initial system design
- o Pilot program operation of demonstration, including evaluation
- o Final system design
- o Installation costs, operating costs, and benefits during the period of phasing in the system

- o Routine operating costs after installation, including facilities, personnel with associated benefits, overhead, supplies, and indirect costs (data processing, training, continuing evaluation of program benefits, costs, and system modification)

New Revenues to State and Local Governments

Of critical concern to local government are the net revenue or cost-revenue implications of the administrative adjudication system. Information abstracted from various studies may be helpful in developing arguments for or against administrative adjudication in other jurisdictions.

New York

The three major areas in which cost savings and other benefits accrued as a result of administrative adjudication were the criminal courts, police, and actual operation of the Administrative Adjudication Bureau (AAB). The first two have already been mentioned.

The AAB reportedly increased overall revenues 25 percent, while reducing operating costs when compared with the prior court system.

There were wide variations across New York's cities and in the average expenses of processing a summons, but for New York City this figure decreased every fiscal year from a high of \$7.21 in its first year to \$4.38 in the year ending March 31, 1975. This drop represents a reduction of 33 percent, which would be even greater if an allowance were made for the effects of inflation during the 5-year period.

The New York report emphasized that the computerized data processing system employed by the Bureau was largely responsible for the increased efficiency.

Start-up expenses were about 10 percent of the 1st-year cost in New York; about one-third of this amount was for staff expenses and one-third for

equipment (primarily visual display units), with the remainder going for travel, space rental, telephone, and indirect costs.

California

In the California feasibility study, benefits to State and local governments were categorized in two ways: 1) realizable dollar savings and 2) the economic value of improved service levels.

Benefits, disadvantages, and costs were aggregated into the following six categories:

- o Deferred creation of municipal court departments
- o Savings associated with court clerical personnel
- o Law enforcement agency benefits
- o Prosecutor workload
- o Increased revenues attributed to detection of recidivists and other factors
- o Reduced reimbursement for driver training programs
- o System installation and operating costs in the California Department of Motor Vehicles

Overall, the study concluded, the proposed administrative adjudication system has the potential for allowing actual dollar savings of about \$19 million during its first full year of statewide operation in 1982. In addition, the equivalent of approximately \$4 million per year may be realized in increased service levels, rather than dollar savings, during the first few years of statewide system operation.

Reducing the number of scofflaws and increasing the probability of detection of multiple offenders may generate around \$2 million to \$3 million in additional revenue.

The net cost of operating the system through the Department of Motor Vehicles was estimated to be \$11.8 million in the first full year of operation, after approximately \$4.4 million in the initial start-up costs. Costs were estimated at approximately 24 percent of current revenue generated from infractions, or approximately \$3.50 per infraction conviction.

From an overall system standpoint, administrative adjudication appeared to be economically attractive to State and local governments in California, since probable overall system savings exceed probable costs.

One problem was not resolved during the feasibility study: some counties and cities could be adversely affected. For, while realizable dollar savings plus increased revenue to local governments should exceed operating costs from the standpoint of the State as a whole, some counties and cities might not be able to realize sufficient savings to overcome a 24 percent revenue loss. And, although it was possible to conceive of a revenue distribution system that would audit local governmental savings and variances in sanction revenues to insure that no county incurred a net loss, it was clear that such a system would be extremely complex and impractical if applied over any extended period of time.

Seattle

It was estimated that the cost to process a case in the Seattle SAFE project was \$13.22. Comparable costs were \$40 for formal court trial and \$9 when the defendant entered a plea and paid a fine by mail. No estimate of the revenue-cost implications of extending the system to a statewide level of operation was made.

Rhode Island

The Rhode Island SAFE project estimated that at a gross level, the average court cost of disposing of a case, regardless of type, was at least \$19.56 and

that the administrative adjudication hearing of \$16.82 was cost-competitive by comparison.

The analyst must keep in mind, however, that estimating unit case processing costs for traffic offenses may not satisfy the informational needs of local government and, by itself, says little about the overall revenue-expenditure impact on local government.

Traffic Safety

At the present time, the analyst has limited options for estimating the traffic safety benefits of administrative adjudication.

There is a substantial body of literature describing the relative effectiveness of different treatments or rehabilitation approaches for traffic offenders, and there is also a consensus that traditional methods of adjudication are not suited to improving traffic safety. But, to date, there are no empirical data to indicate that any system of adjudication, per se, influences recidivism or the frequency of occurrence of accidents. When trying to deal with this aspect of administrative adjudication, the analyst has the following options:

- 1) The analyst can argue that the proposed system contains features that have been shown (based on the literature) to reduce recidivism or accident frequency and that these features are unique to the proposed system.

- 2) The analyst can argue that the proposed system does not affect recidivism or accident frequency, but that it can do no harm.

In the first line of argument, the analyst must show that from the standpoint of costs, judicial interest, or the feasibility of procedural changes, it is either extremely costly or otherwise unattractive to accomplish the same traffic offender treatments in the traditional adjudication system. (A feasibility study that claimed traffic safety benefits for administrative adjudication while

ignoring the possibility of achieving similar benefits in the traditional system would certainly be open to attack.)

In pursuing the second line of argument, the analyst must remove traffic safety benefits from consideration. However, this approach would raise problems with the development of the traffic safety sanction model. From a legal perspective, the sanction model should serve to reduce the likelihood of subsequent traffic offenses. (If the sanction model does not deter recidivism or reduce accidents, its use may be challenged.) See Exhibit 4.

EXHIBIT 4

Monetary Sanction and Traffic Safety Treatment Schedule**

Driver Record Point Count Prior 12 Months	Fines (Average)		Treatment					
	Speeding	Other	W/L*	Educ- tion	Contingency Contracting	Suspension	Revo- cation	Appear- ance
0	20	15	No	No	No	No	No	No
1	24	18	No	No	No	No	No	No
2	30	22.50	Yes	No	No	No	No	Yes
3	37	27.75	No	Yes	No	No	No	Yes
4	45	33.75	No	No	Yes	No	No	Yes
5	54	40.50	No	No	No	Yes	No	Yes
6+	54	40.50	No	No	No	No	Yes	Yes

*Warning Letter

**Source: California Feasibility Study

Under the model, shown in Exhibit 4, a driver improvement treatment would be triggered by the accumulation of points on the driver's record. A point is defined as any moving traffic violation or accident.

