

Behold!
THE LOWLY P.J.C.

I. INTRODUCTION

When prayer for judgment is continued in a traffic case, the offense is not assessed against the right to operate a motor vehicle. ¹ Lawyers and judges traditionally have approached the traffic case P.J.C. as if it were a bastard child. It is, perhaps, this attitude which has led to much of the recent criticism of the P.J.C. by politicians, ² court administration, ³ and the press. ⁴ The criticism, in turn, has caused even more hesitation to approach the matter openly.

There is no reason for lawyers and judges to avoid open discussion and use of the P.J.C. It is a perfectly legitimate device and ought to be used in appropriate cases.

II. THE P.J.C. AND LEGISLATIVE INTENT

Recently, there have been suggestions that the P.J.C. is a judicially conceived loophole, designed to thwart the intent of the legislature. ⁵ History does not bear this out.

By 1894, the practice of continuing prayer for judgment in criminal cases was in widespread use in the courts of the State. And, in that year, the Supreme Court of North Carolina commended it: "The exercise of this discretionary power has not heretofore been questioned, and the beneficial effects of its judicious use have been made so manifest as to commend it both to the judges and the people." ⁶

It was two years later, in 1896, that Henry Ford rolled out the first horseless carriage. ⁷ And not until 1935 was the first statewide driver's license law enacted, including provisions for loss of license for "convictions." ⁸

It is fair to infer that, by keying license loss to "convictions," the legislature intended to place final authority in the courts, where the P.J.C. power could prevent assessment against the license even though the offense in question had, in fact, occurred. This legislative intent remains; in 1973, alone, three bills to abolish the P.J.C. never got out of committee. ⁹

III. THE P.J.C. AND PUBLIC POLICY ISSUES

Yet, the questions remain:

Should the courts have the power to prevent assessment of a traffic offense against the right to drive? If so, when should the power be exercised?

In terms of public policy, the law should be conceived and applied so as to yield the greatest possible net social good.¹⁰ With respect to any regulation of conduct, the first question is whether it accomplishes a social good. That is, does it further some legitimate goal of society. If it is a social good, the second question is whether it has a negative impact on other goals of society. If it does have a negative impact, the question is whether the social good outweighs the negative impact so that the regulation is a net social good. The third question, then, is whether the net social good accomplished by the regulation is the greatest net social good that can be achieved in return for the regulation.

In other words, the system of laws should be designed to maximize social good while minimizing negative impact.

IV. THE SOCIAL GOOD OF TRAFFIC LAWS

Traffic laws are socially good. They further the legitimate societal goals of highway safety, energy conservation, and mobility.

Without limitations on drivers, highway safety would be impossible. North Carolina's 49,000 square miles of land area¹¹ is crisscrossed by 86,000 miles of roads and highways.¹² Restrictions on speed, stop-and-go, and manner of operation of vehicles helps reduce the danger of travel. Recent reductions in the speed limit,¹³ for example, have been followed by significant decreases in deaths and injuries across the Nation and in North Carolina.¹⁴

Energy conservation, only recently related to traffic regulation,¹⁵ is promoted by restrictions on speed. It has been calculated that an automobile traveling sixty miles per hour consumes eleven percent more gasoline than one traveling fifty.¹⁶

The mobility of society, apparently impeded by regulation, is actually stimulated. The apparent effect of lower speed limits, for example, is to increase travel time. A seventy mile-per-hour limit¹⁷ permits travel from Durham to Asheville, on interstate highways (231 miles) in three hours, twenty minutes. The same trip, with a fifty-five mile-per-hour limit¹⁸ requires four hours, eleven minutes. Stop-and-go restrictions also constitute an apparent impediment. The traffic lights on Raleigh's Hillsborough Street seem to increase the travel

time from the capitol to N.C.S.U. But these impediments to mobility are only apparent. The effect of regulation is to facilitate mobility by alleviating driver uncertainty. Without speed restrictions, one would be free, but hesitant, to travel from Durham to Asheville. And the time required to negotiate Hillsborough Street, with cautious checks at each intersection, probably would be greater.

Thus, rules of the road further the achievement of the legitimate goals of safety, conservation, and mobility.

V. TRAFFIC LAWS AND NEGATIVE IMPACT

Traffic laws have a negative impact on the legitimate societal goals of personal freedom and justice.

Personal freedom of the individual is a legitimate goal of society. The personal freedom to act in accord with one's own will is a "natural right." ¹⁹ Its preservation is the only legitimate purpose of government and is the basis for the existence of this State ²⁰ and Nation. ²¹ It is limited only by the welfare of the community at large, a limitation expressed in the maxim, "Sic utere tuo ut alienum non laedas," (So use your own that you do not injure that of another). ²² Obviously, the regulation of traffic inhibits the social ideal of complete personal freedom: one may not drive a car in accord with one's will.

The concept of justice is that of giving "to every man his due." ²³ There is, of course, much debate on how that concept can best be made a reality. But there is agreement that the attainment of justice is a first priority of government. As John Marshall said, "Justice is the end of government. It is the end of civil society." ²⁴ It may, in fact, be the key to the survival of society. As Daniel Webster put it, "Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together." ²⁵

Traffic regulations have a negative impact on the goal of justice because of the design of the laws, the method of detecting violations, and the means by which guilt is determined.

In design, laws are only words, arranged to express the kinds of conduct prohibited. ²⁶ Theoretically, that conduct is keyed to the purpose of the law. ²⁷ But, because the language has limitations, the prohibitions set forth do not always accurately reflect the purpose. Traffic regulations proceed on the theory that all violations create danger or waste energy or decrease mobility. In reality, a violation of the speed law might avoid danger, waste, and decreased mobility. Sometimes, the reason for the violation might outweigh the reasons for the law. And, in other situations, the reasons for the law simply may not be affected.

Violation detection also tends to thwart justice. Fate, not conduct, plays the largest role in determining who gets caught. In an average hour, on an average day, there are 142 State Highway Patrolmen actually engaged in detecting traffic law violators along North Carolina's 75,000 miles of state-maintained roads. ²⁸ That is one trooper every 528 miles. ²⁹ These are good odds for detection-avoidance under any circumstances. But fate makes them even better. An approaching motorist (exercising his own discretion) may flash a warning with his headlights. The sun may reflect off the chrome of a hidden cruiser. The trooper may be preoccupied with another driver or writing up an accident report. Traffic may be so dense that an accurate radar speed reading may be impossible. ³⁰

The determination of guilt is concerned only with whether there was a traffic violation--not why. ³¹ And, there is no inquiry into whether the violation was, in reality, dangerous or wasteful.

VI. THE NET SOCIAL GOOD OF TRAFFIC REGULATION

Despite the negative impact on personal freedom and justice, traffic regulation would seem to be a net social good. In fact, the positive effect of regulation on safety alone (aside from conservation and mobility) probably would provide sufficient justification. In 1973, there were 1,892 people killed and 72,069 people injured in North Carolina traffic accidents. ³² Eliminating, or reducing, this kind of personal, physical harm clearly is a matter of top priority.

VII. LOSS OF LICENSE AND PUBLIC POLICY

Since traffic regulations accomplish net social good, it follows that any policy which promotes obedience to the regulations is socially good.

The sanctions of fine and imprisonment encourage obedience. ³³ But, in many circumstances, the risk of a fine, a minor inconvenience, is justified by the perceived need to ignore the regulations. ³⁴ And imprisonment is usually seen as such an unlikely result that, again, the risk is minimal. ³⁵ But a loss of license is neither a minor inconvenience nor an impossibly harsh punishment. ³⁶ It is, in fact, a realistic prospect for those inclined not to comply with the law. ³⁷ The effect of the loss-of-license sanction, then, is to advance highway safety, energy conservation, and mobility in two ways. First violators are removed from the highways. No longer there, they can neither create danger, nor waste energy, nor interfere with the mobility of others. ³⁸ Second, potential violators are deterred from noncompliance. Seeing others without driving privileges encourages obedience to the regulations. ³⁹

VIII. LOSS OF LICENSE: AUTOMATION OR DISCRETION

If loss-of-license provisions tend to accomplish social good, it follows that automatic loss of license accomplishes even more social good. This is true because the realization of the goals of safety, conservation, and mobility is enhanced by the certainty of operation. Since the risk of loss encourages compliance, the certainty of that risk adds to that encouragement.⁴⁰ In fact, certainty, perhaps more than severity, accounts for compliance.⁴¹

But the negative impact of automation, on the goals of personal freedom and justice, is tremendous and totally unnecessary. To key the loss of license to detected violations is to take personal freedom from some drivers for no legitimate reason. If the violation was not related to danger, waste, and decreased societal mobility, or was committed to avoid danger, waste, or decreased mobility, or was committed in the furtherance of objectives more important than safety, conservation, and mobility, it ought not be assessed against the right to drive. To take this much personal freedom, not in furtherance of societal goals, from one detected in violating the law is to deny justice. It is not to give to every man his due.

Clearly, a system which is to maximize the goals of traffic regulation, while minimizing negative impact must identify, evaluate, and weigh the reason for, and circumstances of, the violation, against the reason for the regulation.

An automatic system does not, and cannot, make any such identification, evaluation, and weighing.

Only through a system of human discretion may the greatest net social good be achieved from traffic regulation.

IX. THE P.J.C. AS THE MEANS OF DISCRETION

If the net societal good is to be maximized, the discretion must be exercised with intelligence (to see and understand the issues), wisdom (to resolve them with the most net social good), and integrity (to resolve them honestly). There is, of course, no way to assure that any holder of the power will possess all of these qualities. But that limitation does not mean that the power should be held by no one. After all, there was no way to assure that those who enacted the laws in the first place would be intelligent, wise, and honest. And if a guarantee of those qualities was required for the exercise of power, there would be no laws at all.

There is only one way to assure that the power will be exercised so as to maximize (if not achieve) the potential societal good: subject the holder of the power to the control of the people. Control by the people can be

achieved by subjecting the power holder to their vote and by arming them with information on which they may base a judgment about the intelligence, wisdom, and honesty with which the power is being exercised.

Law enforcement officers are not elected and their decisions are not public. ⁴²

Administrators within the Department of Motor Vehicles are not elected and their decisions are not public. ⁴³

District attorneys are elected but their decisions need not be public. ⁴⁴

The Judiciary is where the discretion should be placed. Judges are elected by the people. ⁴⁵ Their decisions are announced in open court and are preserved in the court files. ⁴⁶ The people, therefore, have as much effective control as is possible.

X. THE P.J.C.: A FORMULA

The public policy considerations discussed above suggest a formula for the use of the P.J.C. in traffic cases which may be expressed as follows:

A traffic offense should not be assessed against the right to drive when--

(1) The violation did not affect the purpose of the regulation (safety, conservation, and mobility) or

(2) The violation tended to further the purpose of the regulation, or

(3) The reason for the violation outweighs (in terms of social good) the purpose of the regulation, or

(4) The negative impact of license loss on society would outweigh the social good to be accomplished.

XI. CONCLUSION

No formula can guarantee wise decisions. And there will be honest differences of opinion. But discussion and decision, based on sound public policy reasoning, can lead to more nearly consistent punishment, with maximum social good and minimum negative impact. And argument in open court should lead to greater public understanding and acceptance.

In short, it is time for the P.J.C. to come out of the closet and into the courtroom. And it is time for it to be used more, not less. And it is time for lawyers to lead the way by asking for, and arguing for, the P.J.C. in open court, in appropriate cases.

Roger Smith
April 10, 1975

FOOTNOTES

1. Barbour v. Scheidt, 246 N. C. 169, 97 S. E. 2d 855 (1957).
2. Pat Stith, "Legislation on PJC's Promised," The News and Observer (Raleigh, December 5, 1973).
3. E. g., Bert M. Montague, Director of the Administrative Office of the Courts, was quoted as having said that "he believes some judges have 'abused' their authority to give PJC's in traffic cases." "PJC Bill is Introduced," The News and Observer (Raleigh, January 17, 1974), p. 6.
4. "Compiling a Sorry Traffic Record" (November 6, 1973); "It Looks Like Crooked Justice" (November 10, 1973); "Judges' Response Is Not Enough" (November 25, 1973); "District Judges Need Limiting" (December 3, 1974); "Unfair Judges Need Disciplining" (December 6, 1973); The News and Observer (Raleigh).
5. "It Looks Like Crooked Justice" (November 14, 1973); "Judges Abuse Their Discretion" (November 19, 1973); "District Judges Need Limiting" (December 3, 1973); "Judge Defends Favoritism By Courts" (January 2, 1974); "Reports Can Help to Curb Abuse" (January 15, 1974); The News and Observer (Raleigh).
6. State v. Crook, 115 N. C. 760, 20 S. E. 513 (1894).
7. "Inventions," Collier's Encyclopedia (U. S. A., 1963), vol. 24, p. 191. Henry Ford's first automobile was produced in 1896.
8. "The Uniform Driver's License Act," Session Laws, 1935, Chapter 52.
9. Senate Bill 966 (January 16, 1974); Senate Bill 1192 (February 19, 1974); House Bill 1503 (January 31, 1974).
10. Ira Sharkansky, Urban Politics and Public Policy (New York, 1971), pp. 179-190.
11. "North Carolina," Collier's Encyclopedia (U. S. A., 1963), p. 612.

12. The World Almanac, p. 447.
13. "Emergency Highway Energy Conservation Act," Public Laws 93-239, 93d Congress (January 2, 1974). The Act provides for the termination of federal highway funds for any state which, within 60 days, does not establish a statewide maximum speed limit of no more than 55 miles per hour. Section 2(b).
14. "What's Behind The Drop In Traffic Deaths? ", Traffic Safety (National Safety Council, November, 1974), pp. 12-14. The article notes a 24% reduction in traffic deaths across the nation between the period January-April, 1973, and the period January-April, 1974, and attributes 11% of the total reduction to lower maximum speeds; "Traffic Death And Injury Report," North Carolina Department of Motor Vehicles (Raleigh, November 20, 1974). As of November 20, 1974, at 10:00 a.m., the Report indicates the following: killed, 1974-1,366; same period 1973-1,707 (a reduction of 341); injured, 1974-49,692; same period 1973-54,139 (a reduction of 4,447).
15. "Legislative History," Emergency Highway Energy Conservation Act, United States Code and Congressional and Administrative News (December 13, 1973), vol. 73, pp. 3344-3347.
16. Legislative History, p. 3345.
17. North Carolina General Statutes, Section 20-141(b)(5).
18. North Carolina General Statutes, Section 20-141(d)(2), as amended, Session Laws 1973, Chapter 1330, Section 7.
19. State v. Warren, 252 N. C. 690, 114 S. E. 2d 660 (1960). "The basic constitutional principle of personal liberty and freedom. . . emphasizes the dignity, integrity, and liberty of the individual, the primary concern of our democracy." At p. 693.
20. State v. Warren.
21. North Carolina Constitution, Preamble. The Constitution was established "for the more certain security of. . . civil, political and religious liberties. . ."
22. United States Constitution, Preamble. The Constitution was ordained and established to, among other things, "promote the general welfare, and secure the blessings of liberty to ourselves and our posterity. . ."

23. Black's Law Dictionary, p. 1002.
24. United States v. Nourse, 34 U.S. 8, 9 L.Ed. 31 (1835).
25. Edwin P. Whipple (editor), The Great Speeches of Daniel Webster (Boston, 1899), p. 533.
26. American Banana Co. v. United Fruit Co., 213 U.S. 347, 53 L.Ed. 826 (1909).
27. Ibid.
28. North Carolina State Highway Patrol, Telephone Interview. Each of 1,129 Patrolmen annually has 104 regular days off, 10 holidays, 5 days of sick-leave, and 15 vacation days. Thus, each one works an average of 231 days per year at the rate of 8 hours per day. $8 \times 231 = 1,848$ hours per year. It is estimated that 40% of total work time is spent in court, paper work, office detail, and special assignment. $40\% \times 1,848 = 739$. Thus, only 1,109 hours (1,848 less 739) are spent in actual patrol by each patrolman each year.
29. 75,000 miles \div 142 patrolmen.
30. "Speed," American Jurisprudence Proof of Facts (New York, 1961), vol. 11, Supplement (1973), p. 23.
31. Henry Brandis, Jr., Stansbury's North Carolina Evidence (Charlottesville, 1973), vol. 1, Section 83, p. 254.
32. North Carolina Highway Patrol, Staff Member, Telephone Interview (Raleigh, November 29, 1974).
33. John Andenaes, "General Prevention-Illusion or Reality," Wisconsin Law Review (1952), p. 176, at p. 180; John Andenaes, "The General Preventive Effects of Punishment," University of Pennsylvania Law Review (May, 1966), vol. 114, p. 949, at p. 960; Charles F. Wellford, "Deterrence: Issues and Methodologies in the Analysis of the Impact of Legal Threat in Crime Control," Journal of Criminal Law and Criminology (1954), vol. 65, p. 117, at p. 120.
34. Andenaes (Pennsylvania), pp. 182, 184; Andenaes (Wisconsin), pp. 963, 965, 969, 970; William J. Chambliss, "Types of Deviance and the Effectiveness of Legal Sanctions," Wisconsin Law Review (1967), p. 703, at p. 716.

35. Andenaes (Wisconsin), p. 192; Andenaes (Pennsylvania), p. 970.
36. Annual Report, the Administrative Office of the Courts, The North Carolina Judicial Department (Raleigh, N. C., 1973).
37. Ibid, Approximately 2.8% of North Carolina's drivers lost the right to drive in 1973.
38. Harrell v. Scheidt, 243 N.C. 735, 92 S.E. 2d 182 (1956). The motor vehicle laws were enacted "to safeguard the use of our highways from those who are not qualified to operate motor vehicles . . ." At p. 738.
39. Andenaes (Pennsylvania), p. 963. Some studies have indicated the contrary. Lineberry and Sharkansky, pp. 272-274.
40. Andenaes (Wisconsin), p. 191; Andenaes (Pennsylvania), p. 961; Chambliss, p. 708; Wellford, p. 119.
41. Andenaes (Pennsylvania), p. 961; Chambliss, p. 708; Wellford, p. 119.
42. N. C. Gen. Stats. §§ 20-185(a); 160A-281; 20-185.
43. N. C. Gen. Stats. §§ 20-3; 20-2; 20-16(d).
44. N. C. Gen. Stats. § 7A-60; Frank W. Miller, The Decision to Charge a Suspect with a Crime (Toronto, 1969), pp. 207-212.
45. N. C. Gen. Stat. §7A-140.
46. N. C. Gen. Stat. §7A-180(3); State v. Dawkins, 262 N.C. 298, 136 S.E.2d 632 (1964); State v. Brooks, 211 N.C. 702, 191 S.E. 749 (1937).