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In the

Supreme Court of the United States

ALAN J. DIXON, SECRETARY OF STATE
OF ILLINOIS,

Appellant

v.

DENNIS N. LOVE,

Appellee

No. 75-1513

March 1 and 2, 1977

Pages 1 thru 55

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ALAN J. DIXON, SECRETARY OF STATE	:	
OF ILLINOIS,	:	
	:	
Appellant	:	
	:	
v.	:	No. 75-1513
	:	
DENNIS N. LOVE,	:	
	:	
Appellee	:	
	:	

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Tuesday, March 1, 1977
Wednesday, March 2, 1977

The above-entitled matter came on for argument at
2:31 o'clock p.m. on Tuesday, March 1, 1977 and was continued
for argument until Wednesday, March 2, 1977

BEFORE:

- WARREN E. BURGER, Chief Justice of the United States
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice
- HARRY A. BLACKMUN, Associate Justice
- LEWIS F. POWELL, JR., Associate Justice
- JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

- MS. PATRICIA ROSEN, Assistant Attorney General of
Illinois, 160 North LaSalle Street, Suite 800, Chicago,
Illinois 60601
For Appellant
- JAMES O. LATTURNER, ESQ. Uptown Legal Services,
4753 North Broadway, Chicago, Illinois 60640
For Appellee

C O N T E N T SORAL ARGUMENT OF:page:

MS. PATRICIA ROSEN,
For Appellant

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JAMES O. LATTURNER, ESQ.,
For Appellee

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REBUTTAL ARGUMENT OF:

MS. PATRICIA ROSEN

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 75-1513, Dixon v. Love.

Ms. Rosen, you may proceed when you are ready.

ORAL ARGUMENT OF JAMES O. LATTURNER, ESQ.

ON BEHALF OF APPELLANT

MS. ROSEN: Mr. Chief Justice and may it please the Court:

This suit involves the constitutionality of Section 6-206(a)(3) of the Illinois Motor Vehicle Code.

This section authorizes the Illinois Secretary of State to suspend or revoke the driver's license, the operator's license of any motorist without a preliminary hearing where the licensee's driving record indicates that he has been repeatedly convicted of violations against traffic regulations indicating a disrespect for the traffic laws and the safety of others or a lack of ability to exercise ordinary and reasonable care.

Briefly stated, the facts giving rise to the instant suit were that Plaintiff's license to operate motor vehicle was suspended for two months in November of 1969. This suspension was pursuant to Section 6206(a)(2) of the Code which authorizes the Secretary of State to suspend a motorist's license when he has been convicted of three traffic violations -- three moving violations within any 12-month's period.

Again, in March of 1970, Plaintiff's operator's license was suspended for a period of two months because he was convicted of driving while his license was suspended under the previous suspension.

Subsequent to these two suspensions, Plaintiff was issued three traffic citations which are relevant to this suit and he was convicted of two citations, one in September and one in November.

On March 27th, the Plaintiff received notification from the Secretary of State's office that a further conviction would result in the loss of his driving privileges. This conviction occurred on March 31st.

On May 28th, notice was mailed from the Office of the Secretary of State which Plaintiff received on June 3rd. This notice informed the Plaintiff that his operator's license was revoked, the revocation to become effective on June 6th.

On June 5th, Plaintiff filed a complaint in the District Court challenging the constitutionality of Section 6206(a)(3) and seeking to enjoin the Secretary of State from revoking his license pursuant to this Section.

Plaintiff asserted that 6206(a)(3) violated the Due Process Clause because it did not afford individuals the right to a separate hearing prior to the issuance of the order of revocation.

A temporary restraining order was issued by the District Court which was conditioned upon the fact that Plaintiff should apply for hardship license, which he did in June and which license was issued to him in July.

Plaintiff's request for a hearing by a three-judge panel was granted on the issue of the constitutionality of this section and the three-judge court entered its memorandum opinion and order on January 20th on cross-motions for summary judgment.

The District Court specifically held that Plaintiff's right to procedure of due process was denied by the practice of the Illinois Secretary of State under this section because a separate hearing on the issue of revocation was not provided prior to the issuance of the order.

The District Court recognized that in practice, the only issue which was taken into consideration by the Secretary of State's Office prior to revocation was the accumulation of points and these points were accumulated by a particular driver through his being convicted of specific traffic offenses, each offense being designated a specified number of points.

However, the court --

QUESTION: Did he receive some kind of a hearing on each one of those violations, or did he have the opportunity?

MS. ROSEN: Yes, Your Honor, he was afforded the

opportunity for a full judicial hearing on each one of the underlying convictions.

QUESTION: How many were there, again?

MS. ROSEN: Three, the last suspension would have been for three traffic violations so he was convicted on three moving violations.

QUESTION: Was this ever certified as a class action?

MS. ROSEN: No, the Plaintiff's class was never certified.

While the District Court recognized that the points were the only factors which the Secretary took into consideration, the District Court determined that because this particular statutory section stated that the motorist lack due respect for the traffic laws and the safety of other motorists upon the highway, that a separate hearing to determine these issues would be required.

Procedural due process would require such a separate hearing prior to the revocation or suspension of a motorist's license. We assert that this was erroneous.

The facts underlying each of the convictions which any motorist would receive in traffic court have been judicially determined in a hearing which provides every individual motorist with all of the safeguards which are required by the concept of due process.

QUESTION: Why was his license taken by the Secretary of State? Was any reason given?

MS. ROSEN: Yes, Your Honor, the Plaintiff in the instant case had been convicted of three traffic violations within --

QUESTION: Is that the reason? Or do you know?

MS. ROSEN: Yes, Your Honor, I do know.

QUESTION: The statute says he can. It doesn't say he must. It says he is authorized to. He is not required to.

MS. ROSEN: Yes, that --

QUESTION: Did he take into consideration the fact this man was a truck driver and needed his license to live? He didn't, did he?

MS. ROSEN: Your Honor, let me attempt to answer your first question, and then I'll --

QUESTION: In your own way.

MS. ROSEN: Thank you. First of all, Your Honor was asking whether -- for what precise reason the man's license was revoked under the particular circumstances and I'd like to address that question first, if I may.

The revocation which took place under 6206(a)(3) was entered because the language in the statute said, "The motorist has been repeatedly convicted of violations" and if one takes a look at the rules promulgated by the Secretary of State's Office, the rules are reprinted in the Appendix of

our brief. One will see that rule 6206(a)(3) specifically states that a motorist who has accumulated sufficient points to warrant a second suspension within five years may either be suspended or revoked by the Secretary of State based upon the number of points in his record.

A person who has been thrice within a ten-year period shall be revoked and this --

QUESTION: The Secretary of State could either do it or not do it.

MS. ROSEN: Well, Your Honor, now, that is the second point that was raised, the power or the authority which is exercised by the Secretary of the State under the Sections, the 6206 Sections, is discretionary and we submit that that is true, that the Secretary has, however, made a determination in his discretion, an initial determination to apply --

QUESTION: Without any hearing of any kind.

MS. ROSEN: Well, Your Honor, I --

QUESTION: I am talking about the Secretary of State. Without any hearing by the Secretary of State or any assistant of his or anybody connected with the Secretary of State, this man's license was revoked.

MS. ROSEN: That is correct. However, we submit that there is no need for a separate or independent hearing here. The reason that there is no need for a separate

independent hearing has to relate back to the fact that the Secretary has initially in his discretion promulgated a point system and this point system is comprehensive and it takes into consideration variable factors.

It does not simply state that if you are speeding on the highway, for example, you will receive 50 points. Speeding was one of the examples which the Plaintiff brings up in his brief. He says that there are many factors --

QUESTION: Ms. Rosen, he doesn't say that if you do this your license will be revoked. He doesn't say that. He says, If you do this, I might do it.

MS. ROSEN: But he does say that, Your Honor. In the point system, it tells. That is true, he does not specifically -- the statute does not say that the suspensions or revocations under this section are mandatory but the suspensions or revocations are governed solely by the points.

If you receive 110 points, you will be revoked. That is the way the point system operates and I would refer the Court to Rule 6204.

Rule 6204 is the rule which is reprinted in our reply brief. It is the rule which specifically discusses what the point system is intended to do and this rule specifically states -- it is reprinted on page 8 of our reply brief that the Secretary of State shall promulgate a point system as a standard in determining whether to suspend or

revoke driving privileges and to determine the period of suspension or revocation.

He does not say that I'll suspend this motorist with 75 points and this one with 75 points I will let go.

He suspends and revokes based on the number of points on the motorist's driving record and that is the only factor which he takes into consideration.

QUESTION: Is there any way for the licensed driver to plead for mercy?

MS. ROSEN: Yes, Your Honor, there is.

QUESTION: When?

MS. ROSEN: Not until after he is suspended or revoked. The reason for that --

QUESTION: Well, that is what I am talking about -- before he is revoked; this truck driver is put out of business and he is not given any chance to go and say, Look, I'm a poor truckdriver, et cetera, et cetera, et cetera.

MS. ROSEN: Well, he can apply for hardship license, Your Honor and also there are special protections for individuals who operate a commercial vehicle or who drive for an occupation.

QUESTION: Well, did you tell this man that?

MS. ROSEN: He was informed when he received the notice of revocation that he had a right to request a hearing under Section 2118. That is standard. If he requires such

a hearing and he has a license to operate a commercial vehicle, he will automatically --

QUESTION: Was he told that?

MS. ROSEN: -- he issued -- he was told that he had the right to request a hearing. He chose not to do that.

QUESTION: Ms. Rosen, how many points had this man accumulated?

MS. ROSEN: I don't really --

QUESTION: The record doesn't tell us, does it?

MS. ROSEN: It doesn't really say.

QUESTION: Does the record tell us how many points are addigned for each type of violation?

How does one get how many points? Does it tell us that? There is a reference on page C-2 to, if you have 20 to 44 points, suspension up to two months. But how do you know whether you have got 10 points or 50 points if you are just an ordinary driver who has been convicted of a couple of offenses? Do you know what your points are?

MS. ROSEN: I don't think you know the specific amount of points. I believe you would have to call --

QUESTION: So that the assignment of points is not governed by statute or regulation at all, is it?

MS. ROSEN: Well, it is governed by the regulation promulgated by the Secretary of State's Office and I think that what the common -- what the ordinary driver or motorist

is aware of, or the only thing which you would actually -- is common knowledge -- is that if you receive three moving violations within a 12-month period, you receive --

QUESTION: But the regulation says, if that happens, you may be suspended as follows, 20 to 44 points, suspension two months; 45 to 74 three months and so forth. But how do you know which penalty would be applied? Or how do you know if maybe you only have 19 points?

MS. ROSEN: Well, it is governed by the particular number of points which you have accumulated within that --

QUESTION: But how do you know how many points you have accumulated?

MS. ROSEN: Well, you would --

QUESTION: How do you know that the Secretary of State has given you the same number of points somebody else is getting for doing the same thing?

MS. ROSEN: You would have to go and check the records. There is no --

QUESTION: You would have to go check what? Go down to Springfield and check the records and --

MS. ROSEN: Either call or --

QUESTION: To say, how many points do I have and am I getting the same points as my cousin, who was convicted two weeks ago for speeding. How many points did he get? Do you have to check that way?

How do you find out?

I think that the attack on the statute is that the Secretary's discretion is totally without any control and I am just trying to find out what that control is.

MS. ROSEN: Well, Your Honor, as least as I understand it, what the Secretary has attempted to do in his discretion is the same thing he would do if he brought in every single motorist who was convicted of three moving violations within a period of 12 months.

If he would look at the nature of the violation, he would look at where it occurred; he would look at whether the weather conditions were clear or adverse and --

QUESTION: He would do this in his office, would he? With the police ticket in front of him, that is what he would have before him. Would he get the transcript of the trial? How does he do this, looking at the weather conditions?

MS. ROSEN: He doesn't do it now and the reason he doesn't do it is he has already done it in a very general way and promulgated a point system and this system is uniformly applied. What he would have to do if he did not have the point system is call the motorist in and say, what was the weather like on the day the occurrence took place?

Were you in a school zone or were you on a highway?

He would have to go through all these. All this is already done. He has done it and he has published a list of

regulations and in that list of regulations he says that you are speeding one to ten miles per hour over the limit in clear conditions, I am going to give you six points for that.

QUESTION: Those regulations are not in the record, though, are they?

MS. ROSEN: No, they are not in this particular record, but unless someone is asserting that one of those regulations is such a blatant abuse of the Secretary's discretion, I don't really see how the point is relevant.

He is doing the same thing on a general basis and applying it to everyone, that he would do on an individual basis if each motorist came in to him with their particular problems and he is applying it uniformly.

It was initially an exercise of discretion when he promulgated the standards but unless someone asserts that the standards as promulgated are patently unreasonable and an abuse of his discretion, I think that he can --

QUESTION: That is precisely what the Plaintiff's complaint asserted and what Judge McGarr thought and apparently the state did not see fit to put something in the record to demonstrate otherwise.

Judge McGarr is quite familiar with your office, as you know.

MS. ROSEN: At least, if the reasonableness of the regulations to my knowledge was not an issue in this appeal,

as I understood it. The primary issue which we were to be addressing is whether the Secretary's discretionary authority, due process --

QUESTION: Well, as I understand it, the complaint says the statute allows the Secretary of State total discretion and you are responding, well, yes, but he defines specific regulations. My suggestion is, if that is your defense, should not that defense have been made in the District Court where the nature of these regulations and their specificity could have been studied by the Court?

MS. ROSEN: Well, the Court can really reach that question because they decide it as a preliminary matter that there was an absolute requirement under the Doctrine of Procedural Due Process, it was an absolute requirement for a hearing and at that hearing, the District Court did not -- the three-judge court did not at any time, to my knowledge, rule or even discuss the reasonableness of the point system as promulgated by the Secretary.

What they said was that in addition to the point system, there has to be an independent hearing on the issue of disrespect for the traffic laws or in the alternative, reasonable or due care and what we are asserting is that if you accept the point system as promulgated, as an exercise of discretion which was within the Secretary's authority and that question was not disputed by the District Court, what the

District Court specifically said was, we accept that this is the way, and that is on page A6, I believe, in the opinion of the three-judge court, in the second sentence appearing on that page, the Court states, "Apparently in practice the accumulation of points is the only fact which is considered in determining whether to suspend or revoke, but neither the statute nor the regulations sanctions the disregard of the conditions of lack of ability to use due care or disrespect for traffic laws and the safety of others. So long, at least, as Illinois law makes a determination of the existence of such lack of ability or disregard a condition to revocation or suspension, a licensee must be given a hearing on those issues before his license can be suspended or revoked."

The Court does not speak in terms of the fact that the Secretary was not authorized to promulgate the point system or that the system as promulgated is in any way an abuse of this discretion.

QUESTION: No, but the Court says that the suspension is not automatic, based on the number of points accumulated.

MS. ROSEN: That is right, and the reason which they give for that not to be true is the fact that the statute speaks in terms of disrespect for the traffic laws and safety of others and I submit that the regulation which I submitted to the Court earlier, 6204, says that the standard

to be used by the Secretary in determining those questions is the point system.

QUESTION: You spoke of a hearing that he could have requested when he got the notice.

MS. ROSEN: Yes, Your Honor.

QUESTION: Will you tell us a little about what that hearing would have been?

MS. ROSEN: Well, under Section 2118, the individual motorist is informed at the time he is revoked or suspended, that he has the right to a hearing which he can request from the Secretary in which the Secretary must set a date for the hearing within 20 days, the hearing to be held as soon as practical and this is a full adjudicatory determination at which a court reporter is present, evidence is taken down and basically what the motorist has an opportunity to do in this instance is that even though there has been an initial determination with which the Secretary cannot argue, that is, this motorist has been careless enough to create a high probability of risks to other motorists on the highway.

He has been convicted on repeated traffic violations.

At this hearing, the motorist has an opportunity to bring in any additional mitigating factors which were not presented at the trial on the initial offense and --

QUESTION: Why didn't he get that hearing in this situation?

MS. ROSEN: He did not request it, Your Honor. He immediately went to District Court and filed --

QUESTION: This is a post-suspension hearing and the issue in the case is whether you are entitled to a hearing before the suspension takes effect.

MS. ROSEN: That is correct.

QUESTION: Okay.

MS. ROSEN: And the --

QUESTION: In turn, the question would be whether it is sufficient to meet the standards of due process, to give prima facie effect to three moving violations for the purpose of suspension.

Is that a correct statement?

MS. ROSEN: That is correct, Your Honor and we submit that since the individual motorist under such circumstances has had opportunities for full hearings on each of the underlying convictions, that the principles of due process are not violated by allowing those convictions to stand as prima facie evidence that this person is a reckless motorist.

I would like to point out that one of the leading cases in the area of whether a hearing is required prior to suspension or revocation was this Court's decision in Bell versus Burson and this was cited by both parties and I would like to point out that I believe that our situation comes within the requirements of Bell v. Burson.

In Bell v. Burson, this Court struck down Georgia's financial responsibility law and they did it because the state did not provide any type of prerevocation or suspension hearing but in doing so, the Court did not say that Georgia had to completely prove the issue of fault, which was really the question.

All the Court required was that the state hold a hearing to determine a reasonable probability of fault and that if such a reasonable probability existed, they would be justified in suspending or revoking a driver's license and we submit that certainly a person, an individual who has been repeatedly convicted of offenses against the regulation and movement of traffic is -- has already demonstrated a reasonable possibility or even probability of risk to other motorists on the highway.

Once this has been accomplished, of course, at a later time, the state has a strong interest in removing such individuals promptly from the highways so that they will not be involved in other traffic accidents which might result in death or personal injury or property damage to other more careful motorists on the highways.

Of course, due process would require a hearing, a full suspension hearing, and that requirement is unquestionably satisfied here by Section 2118.

We submit that a further presuspension or

prerevocation hearing is not required because the individuals have already had hearings, full adjudicatory hearings on traffic violations which are sufficient to demonstrate a high probability of risk and this probability of risk justifies the state in acting summarily to remove, temporarily, at least, these peoples' licenses until a full hearing can be had.

QUESTION: This is analagous to a probable cause that justifies an arrest that can take place without a hearing before the arrest is consummated?

MS. ROSEN: I am not sure I understand the question.

QUESTION: You don't have a hearing before you arrest a person, do you?

MS. ROSEN: No, that is correct and that --

QUESTION: Are you suggesting that these three violations on which there have been full hearings, taken together, constitute probable cause to support the suspension without any hearing at the time of suspension?

MS. ROSEN: Yes, Your Honor, I think that situation is very analagous because I think when the police feel that there is probable cause to arrest someone, they are allowed to do this because to remain this individual to remain on the streets creates a risk to the rest of society and similarly, in this case, I feel that once an individual has demonstrated, repeatedly demonstrated careless driving habits which have

caused him to violate traffic ordinances or regulations which are obviously enacted for the safety of the motorist on the highways, the state is justified at that time in taking summary action to remove such a person from the highways before he does serious damage, either to himself or to other individuals on highways.

QUESTION: What can he do to get -- you referred to some sort of a temporary license, a hardship license, I think was the term -- what would he have to do to get that while he was waiting for a hearing, if he were to have one?

MS. ROSEN: Your Honor, he would have to do precisely what the plaintiff in this case did, he would have to --

QUESTION: And please tell us again, what was that?

MS. ROSEN: He would have to apply to the Secretary of State's Office and all you have to demonstrate, in order to get a hardship license, is that it is causing you -- you need your car to get to and from work would be sufficient grounds for the Secretary --

QUESTION: Or if you were a taxicab driver, that you made your living that way.

MS. ROSEN: Right. That would be another instance in which you would be able to drive pending the outcome of the administrative hearing, under those circumstances.

QUESTION: How long does it take to get that kind of a matter presented?

MS. ROSEN: Well, Your Honor, I can answer you specifically. In this case I believe the Plaintiff applied on June 10th for the hardship license and it was granted on July 25th. There is a hearing involved but the hearing is not in any way analagous to the hearing that is held under Section 2118 which takes an extended length of time due to the fact that testimony and evidence is taken at the pre-hearing, so I would say anywhere from three to four weeks would probably be adequate time.

I would also like to point out that if an individual drives for a living -- I see my time has expired. I have --

MR. CHIEF JUSTICE BURGER: That is your warning notice.

MS. ROSEN: Okay. If an individual drives for a living, he is automatically, if he requests a hearing he is given a license to drive pending the outcome of that hearing.

So there are special protections for individuals who make their living through the use of driving. However, those particular protections were not involved in this case because the plaintiff here did not request a hearing.

In summation, I would like to assert that we believe that the hearing which is given on each of the underlying traffic convictions is more than sufficient to satisfy the due process requirements of a hearing prior to suspension or

revocation and that a further hearing, independent hearing by the Secretary of State's Office should not be required and we would ask that the decision of the three-judge court be reversed.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you.

Counsel, I think we'll not ask you to fragment your argument by beginning tonight; if you'll be prepared to begin the first thing in the morning.

[Whereupon, at 2:57 o'clock p.m., the Honorable Court was adjourned until the following morning at 10:00 o'clock a.m.]

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will resume arguments in Dixon against Love.

Mr. Latturner.

ORAL ARGUMENT OF JAMES O. LATTURNER, ESQ.

ON BEHALF OF APPELLEE

MR. LATTURNER: Good morning.

Mr. Chief Justice and may it please the Court:

In order to fully and adequately understand the Secretary of State's action in this case, it is necessary for a full consideration of the entire statutory and regulatory scheme set up by the State of Illinois and under which the Secretary of State acts.

Illinois provides two basic statutory sections regarding the revocation of driver's licenses. They are found in the Illinois Motor Vehicle Code; the first, Section 6205 and the second, Section 6206.

The Secretary acted under Section 6206, which provides for the discretionary revocation or suspension of driver's licenses. For comparison, I would first like to consider Section 6205.

Section 6205 is clearly headed "Mandatory revocation of Driver's License," and provides that the Secretary of State shall forthwith revoke a driver's license upon receiving the report of a conviction of various traffic crimes such as

drunken driving, three instances of reckless driving and various others.

Not only is his action mandatory but at the end of the traffic court proceedings where these convictions take place, the licensee must surrender his driver's license to the clerk or the judge of that court.

The clerk or judge in turn forwards the license to the Secretary, who now needs to stamp it revoked. The Secretary of State must revoke it. He has no discretion to take any other action on that license.

In stark contrast to this mandatory revocation provision, we have Section 6206. This is the provision which the Secretary of State acted under in the present case.

This is clearly headed, "Discretionary authority to suspend or revoke licenses." It gives the Secretary of State the authority to revoke licenses upon the happening of the determination that certain events have happened.

In this particular case, Mr. Love's license was revoked, as stated in the notice, because his driving record indicated a disrespect for the traffic laws.

Other discretionary revocation under Section 6206 even include non-feloniously violating any provision of the Motor Vehicle Code.

QUESTION: Well, it was a little more specific than that, wasn't it? Didn't it have something in it about three

moving violations? Isn't that supporting data?

MR. LATTURNER: No, Your Honor, he was notified, "This action has been taken as a result of your having been repeatedly convicted of offenses against laws and ordinances regulating the movement of traffic to a degree which indicates disrespect for the traffic laws."

QUESTION: Your answer to the question, then, should have been yes.

MR. LATTURNER: No.

QUESTION: Because it is supported by repeated convictions, not just some vague manifestation of disrespect.

MR. LATTURNER: But they have to make the determination of disrespect and again, comparison --

QUESTION: Well, do you suggest that does not? The three moving violations and convictions therefore does not support a conclusion of disrespect for traffic laws?

MR. LATTURNER: As a matter of fact, Your Honor, under the statutory scheme, the commercial driver is allowed five convictions prior to the time his commercial license is revoked. Mr. Love is a commercial driver, as the Secretary of State well knew, since his driver classification is on the abstract of records.

In this case, his commercial license would not be revoked. It, in fact, was, without any prior hearing.

QUESTION: Now, while I have you interrupted for

the moment, the counsel for the state told us yesterday, I thought, and I would like to clarify this, that upon receipt of that notice of determination and upon the termination, there is a provision for a prompt hearing of some kind on a hardship basis. Can you clarify that a little bit and tell us about it?

MR. LATTURNER: Yes, there is no provision whatsoever for a prompt hearing. You can apply for a hardship license. You also can apply for a full post-revocation under Section 2118 of the Code. The hardship procedure is apart from the 2118 proceeding.

You have to apply in writing and by the way, I should add first, on the notice given to the licensee that his license is revoked, in big letters at the bottom of it is, "Your license must be surrendered immediately."

The entire notice has been reproduced in the form that it is.

The license is then surrendered, an effective revocation in itself.

QUESTION: Where is the notice?

MR. LATTURNER: Pardon?

QUESTION: Where is the notice?

MR. LATTURNER: The notice is at page 13 of the Appendix.

The licensee may then file a written request for a

hearing under Section 2118.

The Secretary of State does not have to respond to that request for 20 days. They have 20 days to respond to it. When they respond to it, the response is to set a date further into the future; beyond the 20 days there is no statutory provision for that. It is supposed to be within a reasonable time.

After the hearing is set, it is held. There is then the time for decision. During this entire process, the license is revoked. The revocation is not stayed pending this hearing.

As we have indicated again in the abstract, our experiences on administrative proceedings before the Secretary of State regarding driver's licenses, the process from the time of request to the time of decision runs anywhere from three and a half months to over nine months.

During this time, the license is revoked. There is no prompt hearing. There is nothing that can be done prior to the effective date of the revocation to save the license.

QUESTION: Is that part of what was described as the hardship, to get a temporary hardship license?

MR. LATTURNER: Yes. The hardship license is a part of the 2118 hearing. We got a special one in this case because after filing the action, the action of the revocation

was stayed pending a hearing on hardship which the district court ordered separate and apart of regular 2118 hearing.

It took them a month and a half to make that decision -- from June 10th to July 25th.

Going back again to the statutory scheme under Section 6206, which as I have indicated is purely discretionary, the rules which the Secretary of State has promulgated reinforce this opinion. Rule 6206 clearly states that the Secretary is authorized to take action or he may decline to act, in contrast to Section 6205, where he must act.

Here he has the discretion, even if grounds exist for some reason not to act. The statute, Section 6206, further provides that if he chooses to act, even if a penalty of revocation is authorized, he may substitute an order of suspension instead so again, rather than the definite penalty that must be imposed, he has the discretion lower if he wishes.

The Secretary of State has argued that despite this admitted discretion, they avoid all discretionary decisions by the adoption of a point system but the point system also must be viewed in accordance with the statutory and regulatory system within Illinois.

The point system is provided for under Section 6-204 of the Illinois Motor Vehicle Code, where they talk about traffic violations and that section refers to findings

of guilty on traffic violations as evidence relating to unfitness to safely operate motor vehicle.

The rule which the Secretary of State has promulgated -- Section 6-204, which includes the point system, specifically provides that he shall promulgate a point system as a standard in determining whether to suspend or revoke licenses and further, that point system shall act as a standard for the Secretary in determining whether such person has due respect for the traffic laws.

Thus we find that the point system is not conclusive. It is merely evidence. It is merely a starting point, a guide. The Secretary of State claims that is the only thing they consider.

That is true, because they will not allow the licensee to make any presentation of other evidence. That is not an excuse. That is actually a statement of the problem.

What we need when the Secretary of State is considering some evidence, the traffic record, the right of the other person to the proceeding, the licensee, to be allowed to present what evidence he has in order that there may be a weighing-in of all the evidence. There is no possibility whatsoever for the licensee to make any presentation prior to the effective date of the action.

They claim that there is a prior hearing in traffic court. Again, looking at the statutory scheme, the decision

that is made in traffic court under Section 6-206 is not conclusive. Remember, the decision made in traffic court under Section 6-205, a separate section, is conclusive. The license is surrendered in the traffic court.

Under Section 6-206, however, it is clearly contemplated that the Secretary of State has other decisions to make, decisions which are not determined by the traffic court judge.

First, the Secretary of State has to decide whether or not grounds do exist. As the district court found, he has to make an affirmative determination that, in fact, there is disrespect for the law.

The traffic court only decides single convictions.

QUESTION: Suppose the State of Illinois got to the statute that said that after convictions for moving violations, your license is revoked?

MR. LATTURNER: If they put that into the Section 6-205 scheme, that would be an entirely different case and I think that with the surrender of the license in traffic court that it would meet due process. Otherwise, lower court cases, if the Secretary acts, there would have to be a hearing on clerical error.

We are not challenging 6-205. We are challenging 6-206. They are very different and the difference points up the due process problems.

QUESTION: Mr. Latturner, does the point system set out any written regulation that the Secretary has promulgated under the statute?

MR. LATTURNER: Yes, it is.

QUESTION: And where does that appear?

MR. LATTURNER: The point system itself is set forth under Section 6-204, which is not reproduced in the Appendix. It was attached to the Secretary's motion to dismiss in the trial court and it would be found in the record as --

QUESTION: It is not in any of the documents submitted to the Court?

MR. LATTURNER: The full point system is not in any of the --

QUESTION: There was some reference yesterday to the reply brief but I didn't quite find that.

MR. LATTURNER: In the reply brief they set forth some of the preliminary regulations that, it's to be a standard, to be used as a standard in determining unfitness. That would -- I am not sure what page in the reply brief it is on.

QUESTION: I can't seem to find it.

MR. LATTURNER: It would be in there.

Pardon? Page 3 of the reply brief. It does not have the full point system.

The second decision that the Secretary of State has to make under Section 6-206 is whether to take any action at all, even if grounds exist and thirdly, if he decides to take action, what particular action he should take.

This Court has recognized as recently as last week in Cod versus Velger, that using the example of a parole, that there are two separate considerations.

First, whether the parolee in fact committed the violation with which he is charged and second, if he did commit the act, whether under the circumstances his parole should be revoked and as this Court pointed out, even if it is admitted that he did the act, it is still required to give him a hearing on what action should be taken and this is the same type of situation that we have in the case at Bar.

QUESTION: In what state did Cod against Velger require that?

MR. LATTURNER: Prior -- In the case at Bar, Mr. Love's driver's license was revoked. It is the harshest penalty that could be imposed by the Secretary of State. The actions of Mr. Love which triggered the Secretary's revocation were minimal, within the statutory scheme.

Mr. Stevens asked yesterday how many points he had accumulated? For all of the traffic violations contained on Mr. Love's record, his total number of points is 71.

Under the statutory scheme, 71 points would warrant

a suspension of up to six months.

QUESTION: That is, under the regulations scheme.

MR. LATTURNER: Yes.

QUESTION: That is not in the statute, is it?

MR. LATTURNER: No, that is under the regulations.

QUESTION: Forty-five to seventy-four says suspension up to three months.

MR. LATTURNER: Forty-five to seventy-four is a suspension up to three months. In fact, his last three violations were 49 points. He had 22 points from prior violations for the total of 71.

So if they are using the points as a guide, there should have been a suspension of no more than six months, instead of a revocation.

QUESTION: Three months.

MR. LATTURNER: Three months. Pardon me.

Justice Stevens also inquired yesterday as to whether or not it would be possible for a licensee to determine the number of points that had been charged against him and the answer to that is also no.

In Illinois, you can write the Secretary of State and for a \$2 fee you can get your abstract of record.

Mr. Love's abstract of record is reproduced at page 10 of the Appendix. It lists all of the violations. It lists any other actions that have been taken. It lists the

type of license, et cetera.

It does not list the number of points that have been charged against him. In order to figure the number of points, you have to acquire their entire records as to how many points are given for each violation.

It cannot be done by writing the Secretary of State.

The Secretary of State also attempts to justify summary action on the basis of an emergency and we submit that an emergency -- yes, sir?

QUESTION: Mr. Latturner, before you get into that, you say the number of points that your client had was 71. How do we know that from the record?

MR. LATTURNER: You do not. You would have to take the violations indicated upon the record in the Appendix and go through the voluminous regulations which are attached to the Secretary's motion to dismiss and figure it out.

They have not been computed within the record.

QUESTION: You have just given us your computation of what you think they are, right?

MR. LATTURNER: That is correct.

An emergency situation which would justify suspension of due process rights does not exist in the case at Bar. As this Court has previously indicated, in order to have an emergency justifying such summary action, it must be justified and necessary in the particular instance. The only

emergency claimed by the Secretary in this action is to remove unsafe drivers from the highway. That does not apply in the particular instance because, as the Secretary also admits, they cannot properly revoke Mr. Love's commercial license. Thus, he would be allowed to return to the highway for the major part of his driving life. That is because Section (C) (2) of the statute in question here allows the commercial driver five violations prior to suspension or revocation.

QUESTION: Mr. Latturner, looking at that record at page 10, is that a list of eight arrests for traffic violations?

MR. LATTURNER: It lists eight tickets. Two out of the six do not pertain or are not chargeable against suspension or revocation of a license. The first one --

QUESTION: What significance has the heading, "Date of arrest"?

MR. LATTURNER: It means he was giving a ticket. For example, the first --

QUESTION: Giving a ticket and not arresting?

MR. LATTURNER: Pardon?

QUESTION: Not arrested.

MR. LATTURNER: No. There are some violations which apply towards potential suspensions or revocations.

There are some violations that do not apply towards

suspensions or revocations.

QUESTION: Like a parking ticket or something?

MR. LATTURNER: Yes, as a matter of fact, the first one, for example, driving without a taillight on.

QUESTION: Why would they have date of arrest?

MR. LATTURNER: A ticket is determined to be an arrest. That is all that it means.

QUESTION: Even a parking ticket?

MR. LATTURNER: They do not list parking tickets.

QUESTION: No, is a parking ticket considered an arrest in Illinois?

Generally an arrest is something considered different and more grave than a citation or just giving him a ticket, to be a parking ticket.

MR. LATTURNER: I don't know if I can answer your question definitively. As a practical matter on the record, they do not include parking tickets. They do include all other tickets, whether or not they go to a suspension.

QUESTION: All other so-called "moving violations?"

MR. LATTURNER: Yes. And as I say, the first one is for driving without a taillight. This has no bearing on suspension or revocation.

QUESTION: Can you give us any idea what the others are?

MR. LATTURNER: You mean the six that he was

charged with?

QUESTION: Well, I see eight.

MR. LATTURNER: Well, no, see, the first one, Justice Brennan, is driving without a taillight, for the purposes of the suspension or the revocation.

QUESTION: Yes, what about the second one?

MR. LATTURNER: That does not count.

QUESTION: What is the second one?

MR. LATTURNER: The second one I think is an improper turn.

QUESTION: The third?

MR. LATTURNER: The third one, I believe is another improper turn.

QUESTION: How can you tell by looking at this on page 10?

MR. LATTURNER: You can't tell, you have to go back to the section which I have done prior to this and I am now relying on my memory.

The first two were improper turns, I think. One is a lefthand. I am not quite sure what the other one is.

The third one, if you are looking at description of action, the 104901, is a speeding ticket.

QUESTION: You skipped the third one.

MR. LATTURNER: No, both the 202 and the 218 are both improper turns.

QUESTION: Then what is the 103, then, the very first one?

MR. LATTURNER: The 103, as I indicated, was the --

QUESTION: The tail light and the two improper turns.

MR. LATTURNER: Right, and then speeding --

QUESTION: So now we are at the fourth one.

MR. LATTURNER: The fourth one -- the action taken there is the initial suspension in 1970. That was not a ticket. That just indicates the action of the Secretary of State.

The fourth item, I believe, is the termination of suspension which, again, appears on the record.

The fourth item is driving while suspended, which resulted in the next item, which is the second suspension.

The following item is the termination of that suspension.

Again, under description of action, if we are now down to the line of 1060103, the following three are speeding tickets and those are the three that triggered this action.

The last item, the 6206A3 is the notation of the revocation that was entered in the case at Bar.

QUESTION: Mr. Latturner, what is the "stop in effect?"

MR. LATTURNER: Pardon?

QUESTION: The "stop in effect," that final column over there on the right.

MR. LATTURNER: That, I have never understood.

The only emergency that the Secretary of State has alleged in the case at Bar is to remove unsafe drivers from the road. It does not apply to this situation because they cannot remove Mr. Love legally from the road for driving as a commercial driver.

Secondly, they never charged him with being an unsafe driver. They charged him with disrespect for the laws. under a statute that authorizes them to charge him with either disrespect for the laws or disrespect for the safety of other people on the highway. They charged him only with disrespect for the traffic laws. Secondly --

QUESTION: Would you rather have had it the other way?

MR. LATTURNER: Pardon?

QUESTION: Would you rather have had it the other way?

MR. LATTURNER: I don't think that it would have been proper to charge him with that. As you notice, on the traffic record there are no accidents listed for Mr. Love.

QUESTION: I thought there was one with a collision somewhere -- if I can read these hieroglyphics -- but maybe not. Are you representing there is no collision at all?

In in of these?

MR. LATTURNER: My understanding of this record, there is no collision on it.

QUESTION: But he had, at least within six months, three speeding tickets.

MR. LATTURNER: That is correct.

QUESTION: And this is not a hazard, in your estimation?

MR. LATTURNER: It does not pose an emergency situation which justifies the suspension of the Due Process Clause. We are not saying that the State of Illinois cannot remove drivers that they determine to be disrespectful or unsafe from the roads.

What we are saying is that they cannot do that until after they have given the licensee the opportunity to tell his side of the story.

In fact, at the case at Bar --

QUESTION: Did he object to these speeding tickets in any way?

MR. LATTURNER: I am not sure if he appeared in court. We do not contest the findings of guilty.

QUESTION: Well, he certainly was given an opportunity to tell his side of the story at the time of the speeding charges, wasn't he?

MR. LATTURNER: After the speeding charge itself.

QUESTION: Yes.

MR. LATTURNER: He was not given the opportunity to tell his side of the story to the Secretary of State when the Secretary of State took --

QUESTION: Well, his side would have been, "Yes, I was speeding." Presumably he does admit he was speeding because he didn't go in there and defend and he was convicted. "Yes, I was speeding, but I am not disrespectful of the law."

Is that it?

MR. LATTURNER: I think he would point out that, except for the two groupings of tickets of three each, that there are no other violations which would lead to the accumulation of points on his record.

To a large extent, this entire procedure is not how many tickets you get but how you group them. In the seven-year period, it is possible for another driver to have been found guilty of 14 speeding violations and as long as he never put any three of them within a 12-month period, his license would never be revoked or suspended.

QUESTION: Well, that is a matter of drawing lines and, as we all know, that is what legislation is and surely, while, if you come close to the lines on every side, you can show pretty extreme difference, there certainly is a qualitative difference, isn't there, between a person who violates a speed limit three times over a six-year period as

contrasted with one who violates a speed limit three times over a six-months period.

MR. LATTURNER: But if we are comparing --

QUESTION: Or is it reasonable to think so?

MR. LATTURNER: Well, you can compare this in many ways. If you have three tickets in 365 days, you get suspended. If you have four tickets in 368 days, you do not get suspended.

QUESTION: Well, if they are spaced two chronological days -- two adjacent days and then three the ensuing year.

MR. LATTURNER: The basic purpose for the hearing in the facts of this case, with Mr. Love, they revoked his entire license, yet he is allowed, under the statute, five violations before his commercial license is revoked.

QUESTION: Well, are you arguing that it was a mistake under Illinois law to revoke his license or are you attacking the constitutionality of the law?

MR. LATTURNER: We are attacking --

QUESTION: Now, apparently, under your submission, it was a somewhat improper or erroneous application of the Illinois law in this case, but that is a matter of Illinois law. I thought you were attacking the statute as a matter of the United States Constitution.

MR. LATTURNER: That is right. One of the purposes

of due process is to allow licensees such as in the case at Bar, to make presentations to point out that the policy is being improperly applied to the facts of this case. He has to come forward with the fact that he is a commercial driver, that he has a commercial license.

It requires giving him the opportunity to make a presentation.

QUESTION: Did he do that in this case?

MR. LATTURNER: He had no opportunity to, prior to the effective date.

QUESTION: No, afterwards, did he do it?

MR. LATTURNER: Yes.

QUESTION: Then, after he showed he was a commercial driver, he was allowed to keep his license.

MR. LATTURNER: They gave him a hardship license.

QUESTION: To drive his commercial --

MR. LATTURNER: And finally, they gave him his full license back by order of the court below.

We would also have argued that under the facts, if we would have had a prior hearing, that the facts of this case would not justify the ultimate penalty here of revocation. At the very most --

QUESTION: Well, is it your submission that the full due process hearing must take place?

MR. LATTURNER: Oh, certainly not.

QUESTION: Well, then, what standard do you think the state must satisfy before suspension?

MR. LATTURNER: At a minimum, they have to give him an adequate notice, which apprises him concretely of what he has been charged with and what his rights are. He should then have the opportunity to make an oral presentation to an agent of the Secretary of State which could be on an informal basis.

QUESTION: So you don't think that there is any way a state could say that on the undisputed information we have, probable cause to revoke has been established?

MR. LATTURNER: Under the Illinois statutory scheme, no.

QUESTION: Well, you agree then, that the state need establish no more at the initial revocation than the possibility or the probability of a violation?

MR. LATTURNER: I think they have to have some grounds to act which they notify him of but they have to give him the opportunity --

QUESTION: Well, what standard must they satisfy? Under Bell against Burson and related cases, it is just, at the most, probable cause, isn't it?

MR. LATTURNER: At the most, they could notify him that your record shows so many tickets and give him the right to make any type of presentation that he wants or an informal

hearing and act after that.

What we are asking for is the opportunity for him to talk to an agent of the Secretary of State prior to the effective date.

QUESTION: Even if any rational person would conclude that there is probable cause for suspension based on a series of undisputed conditions.

MR. LATTURNER: There may be probable cause for some action. There is the right to determine what action should be taken.

I should note in connection with that, that numerous states have developed a system which goes a little bit beyond the minimum that I have just indicated, which is probably the most practical method of handling it.

Send out the notice, advise them of their rights, what the basis of the decision is, and if they request a hearing, then they would stay the effective date of the revocation till the hearing is held.

The state can schedule it as quickly as they wish.

On a practical level, I think that would be the most appropriate scheme but we are not asking for the full evidentiary hearing.

QUESTION: May I ask you just one question? Your time is up, but I would like to see what your response is.

The three admitted violations for speeding and

other things are in the nature in this setting of findings of fact, are they not, which are not challenged here.

MR. LATTURNER: We are not challenging the convictions. That is correct.

QUESTION: Now, is not the action of the Secretary of State saying that the license is cancelled under the point system pursuant to the regulations in the nature of a conclusion of law from the admitted, undisputed findings of fact that he has three convictions plus some other violations?

MR. LATTURNER: No, the point system is merely evidence. It is merely a start.

QUESTION: Well, is it or is it not in the nature of a conclusion of law?

MR. LATTURNER: No, he must make the determination of disrespect. It is the starting point for it but it is evidence that is clear from the entire regulatory scope.

QUESTION: May I ask you a question, too, Mr. Latturner? Is it your view, just focusing on this probable cause for a moment, that if the conclusion of law is that the license should be revoked, that as a matter of Illinois law, the three findings of fact do not, as a matter of law, establish probable cause for that conclusion?

Because with this driver, three violations would not justify the revocation.

MR. LATTURNER: That is correct.

QUESTION: So that on the undisputed facts, there was no probable cause.

MR. LATTURNER: There was no probable cause for the revocation of the commercial license.

QUESTION: Which is the action that was taken.

MR. LATTURNER: That is right. The license was revoked. That is why we need some type of prior hearing which, in the case at Bar, could be an informal conference to make this known.

QUESTION: Mr. Latturner, what would happen if he had had five convictions?

MR. LATTURNER: If he would have had five convictions?

QUESTION: Yes, sir.

MR. LATTURNER: He would have received a notice similar to what he did.

QUESTION: Would you still be objecting?

MR. LATTURNER: We would be objecting. We would have asked for a hearing on the revocation.

Our preference here is to work through the administrative system. That is what we are here today for, not to be presenting this to a court but to have the opportunity to make the presentation to the administrative officer.

Obviously, some cases are going to be lost before the administrative agency, but others will be won. What we

need is the right to go through the administrative proceeding. We do not have that prior to the effective date of the action here.

QUESTION: What if Illinois had provided that upon any conviction for speeding, there is a mandatory revocation of your driver's license for 30 days?

MR. LATTURNER: That is Section 6205.

QUESTION: You would not have any constitutional objection to that, would you?

MR. LATTURNER: We are not contesting the constitutionality of that.

QUESTION: If, upon conviction, you would face having your license revoked for 30 days.

MR. LATTURNER: You would go to the driver's license judge in the traffic court. That is what they do in Section 6205 cases. It is very different from the discretionary procedure here. Thank you.

MR. CHIEF JUSTICE BURGER: Do you have anything further, Counsel?

REBUTTAL ARGUMENT OF MS. PATRICIA ROSEN

MS. ROSEN: Just a point, Your Honor.

Mr. Chief Justice and may it please the Court:

I would like to point out to the Court that reproduced in the Appellant's brief in the Appendix at page B4 is a section which Counsel was discussing with the Court about

revoking the license of the commercial driver and, in fact, this section --

QUESTION: Page B4?

MS. ROSEN: B4, that is correct, Your Honor.

This section does provide that, in order to revoke the license of a commercial driver in his occupation, he must have been convicted of five moving violations, at least two of which occurred while operating a commercial vehicle in connection with his regular occupation.

However, the statute goes on to provide further that he must either submit an affidavit in writing to the Secretary of State, informing the Secretary of State the number of offenses committed while driving a commercial vehicle in connection with his regular occupation or, in the alternative, he must request a hearing under Section 2118.

If he does neither one of those things, the statute goes on to provide that the Secretary may revoke or suspend the license of such person to drive any vehicle if he does neither one of those things.

So he could either submit an affidavit or request a hearing and the Plaintiff in the instant case did neither one of those things.

QUESTION: If he requests a hearing, the license is not revoked, meanwhile?

MS. ROSEN: That is correct. The Secretary of

State will send such a driver a license to drive a commercial vehicle in his occupation, pending the outcome of the administrative hearing.

QUESTION: If he requests a hearing.

MS. ROSEN: That is correct.

QUESTION: If he submits the affidavit --

MS. ROSEN: Same effect.

QUESTION: And did he have a chance to submit the affidavit in this case?

MS. ROSEN: He certainly -- or request a hearing, and he did neither one of those things.

QUESTION: Because he had a notice that said, "We are about to suspend your license"?

MS. ROSEN: That is correct. He was notified by letter that they were about to suspend his license and instead of submitting an affidavit or requesting a hearing under 2118, he filed an action in district court seeking an injunction.

QUESTION: Well, of course, the notice did not tell him what he could do.

MS. ROSEN: The notice of revocation on the back does say you are entitled to a hearing under Section 2118, but he did not request one.

QUESTION: Well, do we have any evidence in this case whether those three speeding violations occurred while

he was driving his commercial vehicle?

MS. ROSEN: No, there is no such evidence. The speeding violations were --

QUESTION: And if he had filed an affidavit that all three were while driving his commercial vehicle, then he would have to get this temporary license, is that right?

MS. ROSEN: Right.

QUESTION: Because it takes five --

MS. ROSEN: Right.

QUESTION: -- commercial speeding violations.

MS. ROSEN: That is correct. And after the revocation which Counsel was talking about, the license was revoked not because -- it was because of the three speeding tickets, but that was the basis for the third suspension and because he was suspended three times --

QUESTION: Well, I gather the system operates, then, as if -- where there are only three there is a presumption, unless he rebuts it by affidavit, that all occurred while he was driving a non-commercial vehicle.

MS. ROSEN: That is correct, since the Secretary of State, although he knows that the driver has a D license, that is, a license to drive a commercial vehicle, he has no knowledge as to how many --

QUESTION: So you are saying, then, I take it, that insofar as the commercial aspect of this case is concerned,

the law does provide at least an informal mechanism by which the driver may correct any misapprehension of the Secretary prior to his license ever being revoked.

MS. ROSEN: That is absolutely correct. There are special protections for individuals who drive commercial vehicles in an occupation.

QUESTION: Well, in this case, all he got was this revocation. Am I right?

MS. ROSEN: He was notified that his license was to be revoked, Your Honor, that is correct. And he was also notified --

QUESTION: Well, no, just, is there anything in the record other than this revocation slip? Is there anything else in the record?

MS. ROSEN: I don't understand the question, Your Honor.

QUESTION: You said that before his license was revoked, he was given the opportunity to do so. Is that correct?

MS. ROSEN: Your Honor, what I said was, at the time his license is revoked, not before, but at the time he knows his license -- he got notification first of all before his license was revoked that it was going to be revoked on the 27th of March.

QUESTION: Yes. Where is that in the record?

MS. ROSEN: That appears in the opinion of the district court. They note that on March 27th he was notified that one more conviction would result in the loss of his driving privileges and on March 31st, the same year, he was convicted.

So he knew prior to the conviction that if he had one more conviction he was going to lose his license. He could have at that time contacted the Secretary of State's Office and said, I have a pending traffic ticket. I am afraid I am going to lose my license. What should I do if I am convicted?

QUESTION: And he was not sent a letter by the Secretary of State telling him that.

MS. ROSEN: He was sent a letter by the Secretary of State informing him that one further conviction would result in the loss of his driving privileges.

QUESTION: And that letter is in the record.

MS. ROSEN: Your Honor, that appears in the opinion of the district court.

QUESTION: Is it in the record?

MS. ROSEN: I am sure it is, Your Honor, but I can't cite you to a particular page in the record at which the letter appears. The district court does refer to it in their statement of facts; on page A2 of the Appellant's brief the district court states specifically, "On March 27th, 1975 --"

this is in the second full paragraph near the bottom --

"Plaintiff was notified by letter that a further conviction would result in loss of his driving privileges."

The third citation had been issued to the Plaintiff on February 12th, 1975 and his subsequent conviction occurred on March 31st, 1975.

So in between his third and final speeding ticket and his conviction, he was notified by letter from the Secretary of State's Office, if he was convicted one more time, he was --

QUESTION: Is the entire record filed here?

MS. ROSEN: Yes, Your Honor, it is.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Counsel.

The case is submitted.

[Whereupon, at 10:46 o'clock a.m., the case was submitted.]