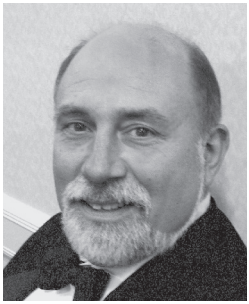

# Location is Everything

BY HON. ADAM SEIDEN *

You are heading home on the Henry Hudson Parkway northbound. You entered that road off the West Side Highway in New York City. You had a good day at work and you are relaxed listening to the satellite radio you recently had installed in your car.

You are riding along in the center lane doing around 60 miles per hour as you cross over from New York City to Yonkers in Westchester County heading towards the Cross County Parkway. You are in no particular hurry. Traffic is moderate and moving. You are staying with the flow of traffic.

Suddenly a police car with his lights flashing appears behind you. You move over to the right lane to get out of his way and he pulls over also. You look down at your speedometer and you have decelerated to 45 miles per hour. Over his loudspeaker the officer tells you to pull off the road onto the shoulder and stay in the car. You look in the mirror and see you have been stopped by a state trooper. As with any traffic stop, your heart skips a beat. Were you speeding? What did you do? The trooper approaches the car and asks for your license, registration and insurance card. As you comply, you ask him what you did wrong. As the officer looks at your documents he asks you if you knew how fast you were going. He also asks if you know the posted speed limit.[1] You say around 45 or 50 miles per hour and the officer asks you to wait in the car. He returns to his vehicle, runs a computer check on you and starts writing a ticket.

After what seems like an hour (and is really only five minutes) the trooper returns and hands you a simplified traffic information (traffic citation) alleging that you were speeding in violation of Vehicle and Traffic Law § 1180(d). The ticket says that you were traveling 61 miles per hour in a 50 mile per hour zone.[2] The trooper tells you to slow down, that you can leave, and returns to his vehicle.

You toss the ticket on the front passenger seat and slowly pull into traffic for the rest of your journey home. What was once a pretty good day you feel has been at the very least compromised. You go the rest of the way home well below all posted speed limits.

When you get into your house you pull out the ticket and take your first detailed look at it. You see that it has been made returnable in the Yonkers City Court. You do not know it, but you just caught a break. Because the trooper made the ticket returnable in Yonkers instead of New York City, he has saddled himself with a greater burden

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of proof. If you go to trial, it will be harder for him to prove your guilt than if he had made the ticket returnable in New York City.

## A Tale of Two Statutes

The standard of proof in a court of law in New York State is controlled by Criminal Procedure Law (CPL) Article 70. Section 70.20 states:

> STANDARDS OF PROOF FOR CONVICTION
> No conviction of an offense by verdict is valid unless based upon trial evidence which is legally sufficient and which establishes beyond a reasonable doubt every element of such offense and the defendant's commission thereof."[3]

As Yonkers City Court is a court of law and you are charged with an offense the prosecuting authority must prove its entire case *beyond a reasonable doubt* for you to be convicted as charged.

Vehicle and Traffic Law (VTL) Article 2-A governs the adjudication of traffic infractions. It is applicable to, among other matters, traffic violations which occur in a city having a population of "two hundred thousand or more" which has set up administrative tribunals. VTL § 227.1 states as follows for hearings and determinations:

> "Hearings, determinations
> Every hearing for the adjudication of a traffic infraction…shall be held before a hearing officer…The burden of proof shall be upon the people, and no charge shall be established except by clear and convincing evidence…."[4]

Had the trooper made your simplified traffic information returnable in New York City, the case would have been heard in an administrative tribunal before an administrative law judge. That tribunal is not a court of law therefore CPL § 70.20 is not applicable. The burden of proof would not be "beyond a reasonable doubt" but rather the lesser burden of "clear and convincing evidence."[5]

As one can see, we have a situation where the exact same conduct committed by the exact same person is treated very differently depending upon where it occurs. This is so even if, as in our hypothetical situation, the violation is one continuous occurrence and the two locations are only feet apart (either side of the border between a large city with, and a small city without, a violations bureau). Somehow, this does not seem fair or logical.

## Constitutional or Not?

This apparently conflicting statutory scheme was challenged in the case of *Rosenthal v. Hartnett*.[6] Mr. Rosenthal was found guilty of speeding by an administrative law judge on the standard of clear and convincing evidence and after exhausting his administrative remedies, sought a review and annulment of the decision in the Supreme

Court by way of an Article 78 proceeding. He argued that the determination was arbitrary and that Vehicle and Traffic Law § 227(i) was unconstitutional.

The Supreme Court reviewed various instances of geographic discrimination by statutes and distinguished this situation from those that were previously found constitutional. The Supreme Court stated: "There is, however, a clear distinction between changing procedures or forums to enable a more efficient processing of matters and changes in the quantum of proof necessary for conviction."[7]

The Court believed that no compelling reason had been advanced to indicate how efficiency would be damaged by maintaining the existing quantum of proof. It therefore annulled the decision and remanded for further proceedings "on the ground that the improper quantum of proof was applied, and that [the statute] effects an unconstitutional deprivation of due process…"[8]

The Supreme Court determination was appealed directly to the Court of Appeals as a matter of right on constitutional grounds,[9] the Court of Appeals by a 4-3 vote, reversed, reinstated the administrative determination, and dismissed the Article 78 proceeding.[10]

The majority Court of Appeals decision by Judge Jones broadened the issue of the case from whether the quantum of proof provision was unconstitutional to whether the legislature may constitutionally transfer adjudication of traffic infractions from the judicial to administrative procedures, including the concomitant lower standard of proof. Once the Court changed the perspective of the case, Mr. Rosenthal's appeal was a loser.

The Court of Appeals noted that strong presumptions of constitutionality attach to the action of the legislature.[11] The legislature is of course presumed to have investigated the need for and importance of the particular statute.[12] Finally, it is much more difficult to overcome the entire chosen scheme of legislation as the Court of Appeals perceived the issue than it is to declare one portion of a statute unconstitutional, as the appellant and the Court below saw the case.

The majority opinion put emphasis on the fact that the punishment for conviction was limited to the imposition of a fine without the possibility of imprisonment.[13] This factor according to the Court put the appellant on the same level as all other civil fines and penalties imposed by an administrative agency on a quantum of proof lower than beyond a reasonable doubt.[14]

Virtually as *dicta* the Court dismissed *any equal protection* argument by stating "Equal protection does not require territorial uniformity of law within a state[15] citing various U.S. Supreme Court cases.[16]

Spirited dissents were filed by Judges Wachtler and Fuchsberg. The former claimed that the privileges of driving a car are important in our modern world. A loss of those privileges is serious to the average person within the State. He opined that one should not have to face jail to be afforded the right of requiring proof beyond a reasonable doubt for conviction.

Judge Wachtler found that previously the court "consistently recognized the quasi criminal nature of traffic law enforcement and has generally held that such prosecutions are governed by the rules of criminal law.[17]

Finally, Judge Wachtler recognized the legislature's right to direct procedures that enable more efficient processing of matters, however he found that this statute does not bear a reasonable relationship to that legitimate purpose. He stated that "changing the quantum of proof does not promote efficiency or reduce the case load."[18] He found that the statute unconstitutionally impaired the petitioner's due process rights.

Judge Fuchsberg echoed much of what Judge Wachtler argued. He however further argued that the majority had improperly broadened the issue. The Court's focus should have been limited to whether the criminal standard of proof should be discarded purely as an incidental result of enactment of a statute that established administrative rather than judicial adjudication of traffic violations. He opined that for the change in burden to occur the legislature must establish rationality. There must be a "connection between the part of the statute under consideration and what it is designed to accomplish."[19] In the case before the Court he believed the legislature had not shown any relationship between the burden of proof and fast and efficient adjudication of matters.

Judge Fuchsberg thereafter disagreed with and forcefully argued against the majority position that elimination of the possibility of jail time makes the lower standard of proof acceptable. His dissent detailed all the negative impacts a speeding conviction can have on a person in our modern world.[20] Finally, Judge Fuchsberg noted his fear that a dangerous precedent was being set by allowing such an incidental elimination of so precious a right as proof beyond a reasonable doubt. What would be next to be so disrespectfully treated: [Cross examination or the right to confrontation?] Judge Fuchsberg found that the statute in question imposed not only on the defendant's due process rights, but also those of equal protection.[21]

## Expansion or *Rosenthal*

This 4-3 decision by the Court of Appeals brought forth by a simplified traffic information has, over the last 36 years, developed into a major point of reference in the laws of New York. The case has been cited by the New York State Court of Appeals in support of territorial discrimination in real estate tax assessments,[22] disparity between payment of judges by location,[23] and the fact that in most instances, a Court should avoid determining whether or not legislation is wise and a good way to deal with an issue.[24]

*Rosenthal* has on the Appellate Division level been referred to in support of various propositions of law including the strong presumption of statutory validity,[25] that teachers in different school districts can face different procedural rules upon dismissal from their positions,[26] and that the party seeking invalidity of a statute must prove so beyond a reasonable doubt.[27] Of course, the Appellate Divisions of the State almost unanimously recognize that in a traffic violation heard before an administrative tribunal the burden of proof required for conviction is "clear and convincing evidence."[28]

The case has even been cited by the Supreme Court of the United States to help justify a modified standard of proof in parental rights termination proceedings.[29] Numerous other State and Federal Courts also cite the *Rosenthal* decision as precedent for various positions.

## Conclusion

It is obvious that the case is now firmly ensconced in our common law. Any modification of the rules that the case presents must come from the legislature.

Judge Fuchsberg in his dissent gave what I believe is proper guidance as to how the statute could be modified if desired. Simply maintain the beyond a reasonable doubt standard, even during an administrative process. He would have done so at the time of the case by striking the elimination of that standard from the statute on constitutional grounds. Now, some 36 years later the legislature can simply amend the statute. It can modify VTL § 227.1 to state that in an administrative proceeding on a traffic infraction guilt must be established "beyond a reasonable doubt" instead of by "clear and convincing evidence."

Such action by the legislature would be appropriate in light of the increased importance of driving privileges in our modern society and the rather large fines, surcharges and impacts currently imposed upon a conviction. Finally, you would not be disrupting the entire scheme of the overall statute or its purpose of more rapid adjudication by administrative procedures. The provision of the statute dealing with the burden of proof is "readily separable"[30] from the rest of the statute. The higher burden could be applied in the administrative tribunal by the Administrative Law Judge just as it is in a Court by a judge.

Consistency is important in the law. Having the same conduct treated differently in different areas of the state is just unfair unless the varying treatment is justified by a rational connection to the purpose of the legislation. An administrative law judge can just as quickly apply the beyond a reasonable doubt standard as he or she can apply the clear and convincing proof standard. No rapidity of adjudication is gained by the change of the standard of proof.

Application of the standard of beyond a reasonable doubt to criminal and quasi-criminal proceedings has been and still should be a basic tenet of our system of justice. It should be applied by all judges when the penalty to the defendant is or can be highly injurious, not just when that person is facing jail time. I believe this is an issue for the legislature to consider.

## Endnotes

1. As an aside, totally irrelevant to this article, you should know that your answer to this question will be used as an admission or prior inconsistent statement should you go to trial. It is amazing how many people admit to going "a few miles over the limit" in response to this inquiry.

2. If you are convicted as charged you will face a fine of between $180.00 and $300.00 and an $80.00 mandatory state surcharge, and, most importantly, 4 points against your driver's license. If you accumulate 11 points your license will be suspended. Also, three speeding tickets in an 18 month period will result in a suspension. *See* VTL § 180(h)3(ii).

3. CPL § 70.20.

4. VTL § 227.10.

5. The differences between the two burdens of proof is well beyond the scope of this article. It

is sufficient to say that the burden of "beyond a reasonable doubt" is the greatest burden anyone faces in American Jurisprudence and is a much more difficult burden to prove than by "clear and convincing evidence."

6. 71 Misc. 2d 264, 335 NYS2d 758 (N.Y. Sup. Ct. 1972)

*7. Id* at 265.

*8. Id.*

9. CPLR § 5601(b)2.

10. 36 NY2d 269, 367 NYS2d 247, 326 NE 2d 811 (1975).

*11. People v. Pagnotta,* 25 NY2d 333, 337 (1969).

*12. Matter of Gormeley v. NY Daily News,* 30 AD2d 16, 20 (3d Dept. 1968), *aff'd,* 24 NY2d 867 (1969). *See also Matter of VanBerkel v. Power,* 16 NY2d 37, 40 (1965).

13. VTL § 227(3).

14. Such as disciplined public employees or violators of alcohol and beverage control regulations.

15. 36 NY2d 269, 274 (1975).

*16. Salsburg v. Maryland,* 346 US 545 and *Missouri v. Lewis,* 101 US 22 (1879).

17. Citing *People v. Phinney,* 22 NY2d 288, 290 (1968) and *People v. Hildebrandt,* 308 NY 397, 400 (1955).

18. 36 NY2d 269, 275 (1975).

*19. Id* at 276

*20. Id* at 277.

*21. Id.*

*22. See Colt Industries vs. Financial Administration,* 54 NY2d 533, 534 (1982).

*23. Weissman v. Eans,* 56 NY2d 458, 465 (1982).

*24. Board of Education vs. NY,* 41 NY2d 535, 539 (1977).

*25. Jeffers v. Duffy,* 52 AD2d 730, 382 NYS2d 159 (4th Dept. 1976) *app dismisssed,* 40 NY2d 844 (1976).

*26. Ahrens v. Board of Education,* 57 AD2d 925, 395 NYS2d 44 (2d Dept. 1977).

*27. Slewett v. Board of Assessors,* 80 AD2d 186, 438 NYS2d 544 (2d Dept. 1981).

*28. Oronzio v. Appeals Board,* 199 AD2d 225, 606 NYS2d 167 (1st Dept. (1993); *Filsome v. Melton,* 89 AD2d 604, 452 NYS2d 460 (2nd Dept. 1982); *Sulli v. Appeal Board,* 55 AD2d 457, 390 NYS2d 758 (4th Dept. 1977).

*29. Santosky v. Kramer,* 455 US 745, 768; 102 Sup. Ct. 1338 (1982).

30. 36 NY2d 269, 279 (1975).