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## Criminal Law—Turn Signal Requirement Qualified

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"Absence of signs erected pursuant to the provisions of section ninety-five-c of this article on any state highway outside of cities or incorporated villages shall be presumptive evidence that the state traffic commission has not fixed a maximum speed greater than fifty miles per hour at that location."

The alleged speeding took place June 11, 1959. Section 95-c of the Vehicle and Traffic Law was repealed (eff. July 1, 1958) and Section 1620 enacted to replace it. Both Sections permitted the State Traffic Commission to set a higher or lower limit than fifty m.p.h. But while the repealed Section 95-c had a provision for posting,<sup>70</sup> Section 1620 did not. Defendant argued that this omission destroyed the presumption of Section 56(3), namely, that in the absence of signs to the contrary the speed limit is fifty m.p.h.

The Court of Appeals in upholding this conviction was in all probability influenced by the results of a converse holding, to wit, that on any unmarked road a person could go any speed and then rely on the argument of this defendant—that there is no presumption of a fifty m.p.h. limit.<sup>71</sup> Thus the state would have been forced in every prosecution for speeding over fifty m.p.h. to prove the existence of adequate markings as one of the elements of the offense.

This situation will be covered by Vehicle and Traffic Law Section 1620 (eff. Oct. 1, 1961), without the need for cross-reference and in effect doing away with the basis of this defendant's argument. The section provides:

"Absence of signs installed pursuant to this section shall be presumptive evidence that the state traffic commission has not established a higher maximum speed limit than the fifty miles per hour statutory limit."

Thus the law was, is and will remain that the speed limit, in absence of other factors expressly enumerated as calling for a lower limit, e.g. a hazard, is fifty m.p.h., unless a higher limit be posted. The fifty mile limit is effective notwithstanding lack of marking to that effect.

#### TURN SIGNAL REQUIREMENT QUALIFIED

Defendant, a motorist, failed to signal before turning at a multi-signal intersection. His action was alleged to be a violation of Section 1163 of the Vehicle and Traffic Law which requires a signal *if other traffic will be affected by such turn*.<sup>72</sup> A divided Court of Appeals affirmed a finding of guilt by the lower courts.

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70. Speed zones established pursuant to the foregoing provisions of this section shall be adequately marked and suitable warning signs erected.

71. *People v. Van Wieren*, 180 N.Y.S.2d 560 (Ct. Spec. Sess. 1958). Similar fact situation to case noted, same Court reversing a conviction under § 56(3).

72. N.Y. Vehicle and Traffic Law § 1163(a):

No person shall turn a vehicle at an intersection . . . or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an

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Prior to 1957, Section 15 (now Section 375) of the Vehicle and Traffic Law made, without qualification, the failure to signal before turning a traffic infraction.<sup>73</sup> However, the Legislature, cognizant of the many instances when such act was insignificant, amended Section 15 through the enactment of Section 1163.

In *People v. Lyons*,<sup>74</sup> defendant maintained the evidence was insufficient as a matter of law to show his failure affected other traffic. The Court said that testimony of a policeman that other vehicles were within 700 feet of the rear of defendant's car, and defendant's own admission that there was traffic coming into the street, was sufficient to find that other traffic could be affected by the lack of a turn signal. In justifying its decision, the Court pointed to the mounting highway fatality toll as demanding a tight application of "these simple, easy-to-obey traffic rules."<sup>75</sup>

### HOMOSEXUAL PROPOSAL CONSTITUTES VAGRANCY

The defendant in *People v. Hale*<sup>76</sup> was arrested for making a homosexual proposal to a police officer in a bus terminal. A conviction was obtained for vagrancy under Section 887(4) cls. (b) and (c) of the Code of Criminal Procedure.<sup>77</sup> The Supreme Court, Erie County, reversed, holding that the defendant's conduct did not constitute vagrancy, but rather that he should have been proceeded against for disorderly conduct under Section 722(8) of the Penal Law.<sup>78</sup> The Court of Appeals held that cl. (b) of Section 887(4) of the Code of Criminal Procedure was restricted in application to those who solicit on behalf of third parties, e.g. "pimps,"<sup>79</sup> but that cl. (c) did include this type of activity, and reversed the Supreme Court's dismissal.

It appears that the defendant's conduct is covered by the disorderly conduct,<sup>80</sup> as well as the vagrancy statute, and that this is an unavoidable result

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appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

73. N.Y. Vehicle and Traffic Law § 15(18) (now Section 375):

. . . it shall also be unlawful to fail to cause such signals to be maintained at all times, in good and sufficient working order, or to fail to use the same when making or preparing to make any stop or turn. . . .

74. 7 N.Y.2d 36, 194 N.Y.S.2d 491 (1959).

75. *Id.* at 37, 194 N.Y.S.2d 493.

76. 8 N.Y.2d 162, 203 N.Y.S.2d 71 (1960).

77. N.Y. Code Crim. Proc. § 887:

The following persons are vagrants: . . . (4.) (a) person . . . (b) who offers or offers to secure another for the purpose of prostitution, or for any other lewd or indecent act, or (c) who loiters in or near any thoroughfare or public or private place for the purpose of inducing, enticing or procuring another to commit lewdness, fornication, unlawful sexual intercourse or any other indecent act.

78. N.Y. Penal Law § 722:

Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct: . . . (8.) Frequents or loiters about any public place soliciting men for the purpose of committing a crime against nature or other lewdness.

79. *People v. Gould*, 306 N.Y. 352, 118 N.E. 553 (1954).

80. *Supra* note 77; See *People v. Lopez*, 7 N.Y.2d 825, 196 N.Y.S.2d 702 (1959); *People v. Liebenthal*, 5 N.Y.2d 876, 182 N.Y.S.2d 26 (1959).