

# Due Process for Drivers Under the Louisiana Revocation Statutes

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thoroughness of appeals court conferences.<sup>47</sup> Nonetheless, when article V, § 8(B) is applicable, the favored position accorded lower court findings of fact by the Constitution of 1974 should guide the courts of appeal in their review of trial court determinations. Ideally, increased judicial sensitivity to the need for delicately balancing first-hand trial court findings of fact with the economics and equity of appellate review of fact will be the product of mandatory appellate reargument.

*Joseph S. Palermo, Jr.*

#### DUE PROCESS FOR DRIVERS UNDER THE LOUISIANA REVOCATION STATUTES

With the recent demise of the right-privilege distinction in procedural due process analysis,<sup>1</sup> the United States Supreme Court is declaring state statutory schemes invalid under the fourteenth amendment with increasing frequency.<sup>2</sup> The parameters of liberty and property interests and the procedures required of the state to protect them are expanding to match increasing governmental power. The purpose of this note is to determine whether the Louisiana scheme for revocation and suspension of drivers' licenses has kept apace with these constitutional developments.<sup>3</sup>

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interval (in about 30 of approximately 800 cases) was there a reversal or modification of a lower court's findings coupled with a dissent from the reversal or modification.

47. This rationale was suggested by Judge Landry in a conversation the writer had with the senior judge of the First Circuit Court of Appeal on December 18, 1975.

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1. *E.g.*, Board of Regents v. Roth, 408 U.S. 564, 571 (1972) ("[T]he Court has fully and finally rejected the wooden distinction between 'rights' and 'privileges' that once seemed to govern the applicability of procedural due process rights."); Morrissey v. Brewer, 408 U.S. 471, 481 (1972); Graham v. Richardson, 403 U.S. 365, 374 (1971). Formerly, many states labeled statutorily permitted activities as "privileges" on the theory that what the state gives it may take away without due process.

2. *See, e.g.*, Goss v. Lopez, 419 U.S. 565 (1975) (Ohio high school student suspension statute).

3. Only LA. R.S. 32:414 (1950), as amended by La. Acts 1974, No. 508 § 1, and LA. R.S. 32:661-69 (Supp. 1972), as amended [hereinafter cited as the Implied Consent Law], will be considered in this note. Other statutes providing for revocation or suspension, such as LA. R.S. 32:415 (1950) (commission of an offense in another jurisdiction which would be grounds for revocation or

Every state has a compelling interest in preventing use of its highways by dangerous drivers. Although summary revocation of the licenses of *all* such drivers might be constitutionally permissible,<sup>4</sup> the applicable Louisiana statutes do not extend so far. The Louisiana Implied Consent Law<sup>5</sup> does not penalize one for driving while intoxicated but rather for his refusal to submit to a chemical sobriety test. One who refuses to submit incurs a six-month suspension of his license, whereas one who submits and proves himself a menace, albeit a complacent one, keeps his license pending trial. The other major Louisiana statute dealing with revocation of drivers' licenses, La. R.S. 32:414, mandates suspension or revocation, with few exceptions,<sup>6</sup> only after the licensee has been convicted of enumerated offenses.<sup>7</sup> Thus the legislation allows significant lengths of time to lapse between apprehension and suspension even in the cases of those drivers most likely to be a hazard to the public safety.

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suspension if committed in this state), LA. R.S. 32:423 (1950) (violation of license restriction), LA. R.S. 32:424 (1950) (incompetence or failure to submit to competency examination), LA. R.S. 32:475 (Supp. 1972) (abandonment of automobile), LA. R.S. 32:872 (Supp. 1962) (failure to deposit security after uninsured accident), LA. R.S. 32:892 (Supp. 1962) (failure to pay judgment), LA. R.S. 32:1023 (Supp. 1962) (failure to report accident), LA. R.S. 32:1441 (Supp. 1972) (breach of promise to comply with another state's traffic citation), and LA. R.S. 32:1477 (Supp. 1972) (habitual offender), are very narrow in scope, and most make no mention of procedure, apparently relying upon section 414. "Revocation" and "suspension" will hereinafter be used interchangeably, as the difference is of no consequence to the topic covered in this note. *See* LA. R.S. 32:401(8), (9) (1950) (revocation requires the licensee to apply for a new license, whereas after suspension the old license is returned, if unexpired).

4. *See* *Goldberg v. Kelly*, 397 U.S. 254, 263 n.10 (1970).

5. LA. R.S. 32:661-69 (Supp. 1972), *as amended*.

6. LA. R.S. 32:414(C) (1950), *as amended by* La. Acts 1968, No. 597 § 1, mandates revocation upon receipt by the Department of Public Safety of satisfactory evidence of a "violation" of LA. R.S. 32:414.1 (Supp. 1972) (unlawful use of license); subsection (E) grants discretion to the Department to revoke licenses based upon enumerated findings primarily related to the licensee's record of past driving offenses or competence to drive, but does not require a conviction.

7. LA. R.S. 32:414 lists conviction, the entry of a plea of guilty and sentence thereupon or the forfeiture of bail, on charges of: driving while intoxicated (on the first offense the judge may prevent suspension); manslaughter or negligent homicide resulting from use of a motor vehicle; any felony, if a motor vehicle is used in the commission thereof; failure to stop and render aid after an accident; or three charges of reckless driving within twelve months.

In addition to the state interests involved, the Louisiana statutes affect significant individual interests. Whether it be deemed right or privilege, liberty or property, the use of the automobile is indispensable to our lifestyle and often to our livelihoods.<sup>8</sup> The licensee thus has an undeniable interest in seeing that his freedom to operate a motor vehicle is not unfairly circumscribed.

The proper accommodation of the conflicting state and individual interests present in the operation of the statutes under consideration must be reached through the language of the United States Constitution. The threshold determination in any due process claim is the existence vel non of a liberty or property interest;<sup>9</sup> a finding of either places the individual within the protection of the fourteenth amendment.<sup>10</sup> While the right to drive an automobile on public highways is not grounded in the Constitution, as a statutory entitlement<sup>11</sup> it falls within the ambit of liberty as well as property.<sup>12</sup> In *Bell v. Burson*<sup>13</sup> the United States Supreme Court, confronted with a due process attack upon a drivers' license revocation statute,<sup>14</sup> stated:

[I]t is fundamental that except in emergency situations . . . due process requires that when a State seeks to

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8. See, e.g., *Wignall v. Fletcher*, 303 N.Y. 435, 103 N.E.2d 728 (1952); *Johnston, The Administrative Hearing for the Suspension of a Driver's License*, 30 N.C. L. REV. 27 (1951).

9. E.g., *Perry v. Sindermann*, 408 U.S. 593, 599 (1972); *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). Property and liberty are not mutually exclusive. See, e.g., *Goss v. Lopez*, 419 U.S. 565, 572-76 (1975) (temporary suspension of public high school students involves both liberty and property rights).

10. The importance of the interest goes only to the form of process due; the nature of the interest alone determines applicability. E.g., *Board of Regents v. Roth*, 408 U.S. 564, 570-71 (1972).

11. "[A] person's liberty is equally protected, even when the liberty itself is a statutory creation of the state." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

12. "Liberty under law extends to the full range of conduct which the individual is free to pursue." *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). Because a driver has a statutory right to the license if he is eligible, and by statute it cannot be revoked without sufficient cause, it is a property interest regardless of the absence of hardship. See, e.g., *Board of Regents v. Roth*, 408 U.S. 564, 577-78 (1972).

13. 402 U.S. 535 (1971).

14. The licensee attacked Georgia's financial responsibility statute on the grounds that, though it required only the posting of security by those involved in accidents, it did not allow them an opportunity to controvert the possibility of liability in the pre-suspension hearing. 402 U.S. at 537-39.

terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case" *before* the termination becomes effective.<sup>15</sup>

Although the Supreme Court established in *Bell* that an individual's right to drive is protected by the fourteenth amendment, it did note that the state may act without a prior hearing in emergency situations.<sup>16</sup> Though invariably denominated an exception, logically the emergency doctrine is not an exception to the individual's right to due process, but rather is a reflection of the balancing approach employed by the Supreme Court.<sup>17</sup>

Expeditious removal of dangerous drivers from the public highways is exactly the type of state interest contemplated by the emergency doctrine.<sup>18</sup> It is not, however, the objective implemented by the Louisiana statutes providing for revocation of licenses. The Implied Consent Law justifies emergency action only if one makes the unfounded assumption that refusal equals drunkenness,<sup>19</sup> and even if one makes this assumption, the "emergency" is no greater than when the driver submits to the test and fails,<sup>20</sup> in which case he may

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15. 402 U.S. at 542-43. The facts of *Bell* were such that the license was essential to the licensee's livelihood. 402 U.S. at 537, but neither the Court's opinion nor the jurisprudence in its wake suggests that the holding would be any different in the absence of hardship. *E.g.*, *Fuentes v. Shevin*, 407 U.S. 67, 88-89 (1972); *Smith v. Department of Public Safety*, 254 So. 2d 515 (La. App. 4th Cir. 1971).

16. 402 U.S. at 542. *See* quote in text at note 15, *supra*. The emergency exception accompanies nearly every procedural due process decision. *See, e.g.*, *Boddie v. Connecticut*, 401 U.S. 371, 378-79 (1971); *Goldberg v. Kelly*, 397 U.S. 254, 263 n.10 (1970) (list of emergencies).

17. *E.g.*, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). *But see* Note, *Specifying the Procedures Required by Due Process: Toward Limits on the Use of Interest Balancing*, 88 HARV. L. REV. 1510 (1975). Due process lies in the balance between a state's interest in summary process and the harm which would thereby befall an individual deprived of a prior hearing.

18. For a discussion of the emergency doctrine in the context of drivers' license revocation, see Note, 52 NEB. L. REV. 412 (1973).

19. *Holland v. Parker*, 354 F. Supp. 196, 202 (D. S.D. 1973). *Contra*, *Campbell v. Superior Ct.*, 106 Ariz. 542 (1971) (high degree of correlation between refusal and intoxication lessens individual interest and allows state to suspend prior to hearing).

20. *Holland v. Parker*, 354 F. Supp. 196, 202 (D. S.D. 1973): "If there is time to permit prerevocation adjudication for the driver found presumptively under the influence of alcohol, then there is no reason why the same opportunity should not be afforded the driver who refuses the test."

keep his license pending trial. That the statute delays the commencement of the suspension until the license is surrendered<sup>21</sup> further dilutes any claim of exigency.<sup>22</sup> La. R.S. 32:414 is subject to similar attack in that the state's interest in summary action is not suddenly greater by reason of a conviction.

The Supreme Court in *Bell* determined that a "meaningful" and "appropriate" hearing must precede effective suspension but provided no further guidelines. Nevertheless, under the balance generally struck by the Court, the greater the extent of agency discretion,<sup>23</sup> the greater the risk of error,<sup>24</sup> including the degree of adjudicative fact in dispute,<sup>25</sup> and the more severe the attending deprivation,<sup>26</sup> the more stringent are the procedural requirements imposed upon the state.

The major provisions of La. R.S. 32:414 rely solely upon the fact of prior convictions<sup>27</sup> with no discretion accorded to the Department of Public Safety as to treatment of individual licenses. Only the identity of the licensee and whether the conviction is of an offense listed in section 414 are normally subject to dispute.<sup>28</sup> Although some authority exists for the

21. LA. R.S. 32:667 (Supp. 1968), as amended by La. Acts 1972, No. 534 § 1.

22. Moreover, the public will be protected from the driver for only six months whether the suspension begins immediately upon refusal or after opportunity for a hearing. Comment, *Oklahoma's Implied Consent Statute—Is Due Process Due?*, 10 TULSA L.J. 398, 408 (1975). Though the courts deny that the sole purpose of the suspension is to aid criminal prosecution, *Harrison v. Department of Public Safety*, 298 So. 2d 312, 318 (La. App. 4th Cir. 1974), it is at least one objective of the statute.

23. See cases cited in note 26, *infra*.

24. Besides disputed facts, risk of error includes the quality of the evidence and the fallibility of the sources relied upon. See, e.g., *Goss v. Lopez*, 419 U.S. 565, 580 (1975).

25. K. DAVIS, ADMINISTRATIVE LAW TREATISE § 7.03 (1958) [hereinafter cited as DAVIS]. Adjudicative facts are those pertaining to a party, those which he is best suited to know, as opposed to legislative facts, which are the general, societal facts underlying the legislation.

26. *E.g.*, *Goss v. Lopez*, 419 U.S. 565, 580, 584 (1975); *Arnett v. Kennedy*, 416 U.S. 134, 201 (1974) (White, J., concurring in part and dissenting in part); *Commonwealth v. Thomas*, 467 S.W.2d 335, 337 (Ky. 1971) (holding unconstitutional a statute very similar to LA. R.S. 32:414(D) (1950), as amended by La. Acts 1974, No. 508 § 1); *Stauffer v. Weedlun*, 188 Neb. 105, 114, 195 N.W.2d 218, 224 (1972) (upholding point-system of revocation without prior hearing because little risk of error and no discretion).

27. See discussion in note 7, *supra*.

28. The validity of the conviction may be challenged, but an uncounseled

position that no prior hearing is required in these circumstances,<sup>29</sup> the better view, which has found some acceptance in Louisiana,<sup>30</sup> is that an "identification" hearing is required before revocation.

The Implied Consent Law is likewise devoid of departmental discretion. Nevertheless, it involves a substantial risk of error. Because no prior judicial disposition of the circumstances surrounding the licensee's refusal is made, a considerable area of adjudicative fact is subject to dispute at the initial hearing.<sup>31</sup> The provisions of section 414 not based upon prior convictions also operate on the basis of disputable facts: Departmental findings of criminal activity<sup>32</sup> and even the Department's opinion that the licensee is "incompetent to drive" or displays "disrespect for traffic laws" are grounds for revocation.<sup>33</sup> The licensee prosecuted under the Implied Consent Law or under these latter provisions of section 414 requires greater procedural protection than one who has been adjudged guilty in a court proceeding. Timely notice, sufficiently detailed to communicate the events to be relied upon for suspension, must be furnished the licensee by the Department;<sup>34</sup> he must be allowed to confront and cross-examine the witnesses against him and present a defense by oral argument and evidence;<sup>35</sup> counsel need not be provided but must be permitted;<sup>36</sup> and finally, an impartial hearing officer must prepare an informal record of the evidence and an informal

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conviction *not* resulting in imprisonment may be relied upon for revocation of defendant's driver's license. *Marston v. Oliver*, 485 F.2d 705 (4th Cir. 1973); *State v. Guillotte*, 297 So. 2d 423, 425 (La. 1974) (dictum).

29 DAVIS at 502.

30. *Smith v. Department of Public Safety*, 254 So. 2d 515 (La. App. 4th Cir. 1971).

31. *See, e.g., Swan v. Department of Public Safety*, 311 So. 2d 498 (La. App. 4th Cir. 1975) (police led licensee to believe he had absolute right to refuse); *Kolb v. Department of Public Safety*, 299 So. 2d 877 (La. App. 4th Cir. 1974) (police failed to inform licensee of consequences of refusal).

32. LA. R.S. 32:414(C) (1950), *as amended by* La. Acts 1968, No. 597 § 1 (revocation upon receipt of satisfactory evidence of a "violation" of LA. R.S. 32:414.1 (Supp. 1972), constituting unlawful use of license).

33. LA. R.S. 32:414(D) (1950), *as amended by* La. Acts 1974, No. 508 § 1.

34. *E.g., Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

35. *Id.*

36. *See Goldberg v. Kelly*, 397 U.S. 254, 270 (1970). *Argersinger v. Hamlin*, 407 U.S. 25 (1972), held that counsel is required in any prosecution that results in "loss of liberty"; however, the opinion made clear that the phrase was used loosely as synonymous with "imprisonment."

opinion containing findings of fact and conclusions of law based solely on that record.<sup>37</sup> Louisiana is free to afford the individual greater protection, but before it may suspend his license under the present statutes these minimum requirements must be satisfied.

Since the Implied Consent Law furnishes a licensee with the right to written notice, opportunity for an administrative hearing and judicial review "in the same manner and under the same conditions as is provided in La. R.S. 32:414,"<sup>38</sup> whatever administrative or judicial review of a suspension order is statutorily available will be found in section 414. That section, however, provides only for a post-suspension hearing before the district court,<sup>39</sup> and although it does provide that the Department *may* conduct an "investigation" prior to revocation, the statute does not indicate that the licensee even need be made a party.<sup>40</sup>

The Louisiana courts of appeal have held consistently that section 414 (and thus the Implied Consent Law) comports with due process;<sup>41</sup> relying upon the opportunity for judicial review provided in section 414(E), the courts have found the necessary hearing prior to *effective* suspension, as required by the Supreme Court in *Bell v. Burson*.<sup>42</sup> However, the stat-

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37. See *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970). See generally *Meyerhoff & Mishkin, Application of Goldberg v. Kelly Hearing Requirements to Termination of Social Security Benefits*, 26 STAN. L. REV. 549 (1974).

38. LA. R.S. 32:668 (Supp. 1968), as amended by La. Acts 1972, No. 534 § 1.

39. The statutory language clearly does not contemplate a prior hearing. "Any person denied a license or whose license *has been suspended*, cancelled or revoked shall have the right to file an application within thirty days thereafter for a hearing before the district court. . . ." LA. R.S. 32:414(E) (1950), as amended by La. Acts 1968, No. 597 § 1 (emphasis added).

40. *Contra*, *Areaux v. Department of Public Safety*, 297 So. 2d 684 (La. App. 4th Cir. 1974) ["investigation" in LA. R.S. 32:414 (1950), must be the hearing referred to in LA. R.S. 32:668 (Supp. 1972)].

41. *E.g.*, *Spencer v. Department of Public Safety*, 315 So. 2d 912 (La. App. 4th Cir. 1975); *Whitaker v. State*, 264 So. 2d 725 (La. App. 1st Cir. 1972), *writ vacated*, 278 So. 2d 503 (La. 1973); *Smith v. Department of Public Safety*, 254 So. 2d 515 (La. App. 4th Cir. 1971). The Louisiana Supreme Court has never considered the matter, denying writs consistently.

42. 402 U.S. 535 (1971). *But see* *Green v. Department of Public Safety*, 308 So. 2d 863 (La. App. 4th Cir. 1975) (mandatory language in LA. R.S. 32:668 (Supp. 1972), requires administrative hearing; trial *de novo* will not suffice); *Jaubert v. Department of Public Safety*, 323 So. 2d 212, 215 (La. App. 4th Cir. 1975) (dissenting opinion).



ute nowhere indicates that a petition for judicial review postpones suspension. In *Harrison v. Department of Public Safety*<sup>43</sup> the Fourth Circuit Court of Appeal reasoned that since the six-month period of suspension under the Implied Consent Law begins only upon surrender of the license, an opportunity for prior review is afforded. The court overlooked the fact that section 414 allows but five days for surrender of the license, on pain of imprisonment,<sup>44</sup> while requiring ten days notice to the Department before the judicial hearing can be held. The licensee must therefore surrender the license at least five days before the hearing or violate the law; the license is thus *effectively* suspended before the hearing.

*Harrison* and its progeny<sup>45</sup> are the only cases that attempt to find compliance with procedural due process in the language of the statute; the remainder of the jurisprudence either omits this step entirely<sup>46</sup> or defers to the presumption of constitutionality.<sup>47</sup> Such a presumption must be based upon a reasonable interpretation of the statute,<sup>48</sup> which is made impossible by both the language and the legislative intent implicit in section 414.<sup>49</sup> Thus, if La. R.S. 32:414 and the Implied Consent Law are to survive the mandates of *Bell*, they will have to be remedied by legislative amendment.<sup>50</sup>

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43. 298 So. 2d 312 (La. App. 4th Cir.), *cert. denied*, 300 So. 2d 840 (La. 1974).

44. LA. R.S. 32:427 (1950), *as amended by* La. Acts 1954, No. 165 § 10. The imprisonment sanction has never been raised on the appellate level in the context of a later surrender.

45. *Spencer v. Department of Public Safety*, 315 So. 2d 912 (La. App. 4th Cir. 1975); *Green v. Department of Public Safety*, 308 So. 2d 863 (La. App. 4th Cir. 1975); *Vicknair v. Department of Public Safety*, 303 So. 2d 226 (La. App. 4th Cir. 1974).

46. *See David v. Department of Public Safety*, 261 So. 2d 347 (La. App. 1st Cir. 1972); *Smith v. Department of Public Safety*, 254 So. 2d 515 (La. App. 4th Cir. 1971).

47. *See Whitaker v. Department of Public Safety*, 264 So. 2d 725 (La. App. 1st Cir. 1972), *writ vacated*, 278 So. 2d 503 (La. 1973).

48. *Pearce v. Sharbino*, 254 La. 143, 223 So. 2d 126 (1969).

49. At the time of its enactment, La. Acts 1946, No. 255 § 16, a prior hearing was deemed unnecessary. *See Longlois v. Department of Public Safety*, 90 So. 2d 595 (La. App. 2d Cir. 1956); *Parker v. Board of Barber Examiners*, 84 So. 2d 80 (La. App. 1st Cir. 1955). Indeed, this position was reaffirmed in 1973 LA. OP. ATT'Y GEN. (Oct. 30, 1973) (unpublished, but on file in the office of the Louisiana Law Review).

50. *See State v. Snyder*, 277 So. 2d 660, 668 (La. 1973) (unconstitutional statute should be corrected by the legislature).

Arguably, the Louisiana legislature has provided just such an amendment in its enactment of the Louisiana Administrative Procedure Act (APA).<sup>51</sup> The Act governs non-revenue licensing "when the grant, denial, or renewal of a license is required by *constitution* or statute to be preceded by notice and opportunity for hearing,"<sup>52</sup> allowing the Louisiana APA to expand its coverage to remedy acts like section 414 when they are constitutionally deficient.<sup>53</sup> Moreover, the Act seeks uniformity of agency process,<sup>54</sup> and "any exception . . . to its applicability would tend to defeat this purpose."<sup>55</sup> Section 414 conflicts with the Act only over provision for prior notice and opportunity to be heard; as these are the very deficiencies sought to be remedied, they should not be relied upon to defeat application of the APA.<sup>56</sup>

The section of the Louisiana APA devoted to licenses, La. R.S. 49:961, apparently was designed to apply only to occupational and commercial non-revenue licensing. Nevertheless, subsumption of drivers' licenses under this general provision would effect the necessary changes in revocation pro-

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51. LA. R.S. 49:951-67 (Supp. 1972), *as amended*.

52. LA. R.S. 49:951(3) (Supp. 1972) (emphasis added). Even if "denial" is construed so narrowly as not to include revocation, the broad definition of "order" in the same subsection does cover it: "the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rule-making, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing . . . ."

53. See *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950).

54. See Foreword, Proposed Louisiana Administrative Procedure Act.

55. *Wong Yang Sung v. McGrath*, 339 U.S. 33, 41 (1950). This decision is highly persuasive authority in Louisiana because of the lack of state jurisprudence interpreting the statute, and the origin of the Louisiana provision in the federal law. *Cf. Kay v. Carter*, 243 La. 1095, 1102, 150 So. 2d 27, 29 (1963); *Roy & Roy v. Riddle*, 187 So. 2d 492, 494 (La. App. 3d Cir. 1966). The statutory enumeration of exemptions from the APA has been judicially expanded only when the APA and the agency's governing statute are "so conflicting as to be irreconcilable." *Smith v. Dunn*, 263 La. 599, 602, 268 So. 2d 670, 671 (1972).

56. *But see* 1973 LA. OP. ATT'Y GEN. (Oct. 30, 1973), *supra*, note 49. *Young v. State*, 298 So. 2d 298 (La. App. 1st Cir. 1974), held the Louisiana Administrative Procedure Act applicable to the Department of Public Safety because it was not a listed exception. *State v. Moore* distinguished *Young* and held the La. APA inapplicable, 311 So. 2d 20 (La. App. 2d Cir. 1975). Both *Moore* and the Attorney General rely on the lack of a requirement of prior administrative hearing and would perhaps change their positions upon a different understanding of *Bell*.

cedure without producing any undesirable results. Section 961 continues all licenses in force pending final disposition of a renewal application timely filed. As this provision does not preclude revocation for cause, and the state's interest in renewal of drivers' licenses is primarily fiscal,<sup>57</sup> its application will cause no disruption in the state's protection of the public. Absent an express finding that the public welfare imperatively requires summary suspension, section 961 requires notice and opportunity for a hearing "prior to the institution of agency proceedings" for revocation. Finally, section 961 provides that the sections of the APA on adjudication, La. R.S. 49:955-64, shall govern this hearing. These sections set forth hearing procedures substantially the same as those developed by the courts under the rubric of due process. They provide the licensee with the powers of deposition and subpoena,<sup>58</sup> and with a less stringent rule of evidence, while preserving intact the rules of privilege.<sup>59</sup> Furthermore, they give the licensee the right to judicial<sup>60</sup> and appellate<sup>61</sup> review. If the courts will not recognize the applicability of the Louisiana APA to the revocation and suspension of drivers' licenses, they should invalidate the present revocation statutes and thereby require the legislature to provide the licensee the procedural protection that the Constitution demands.

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57. See LA. R.S. 32:412(D) (1950), as amended by La. Acts 1973, No. 138 § 1: "Every license shall be renewable . . . upon application and payment of the fee. . . ." The testing of renewal applicants is minimal, especially with regard to its impact upon safety.

58. LA. R.S. 49:956 (Supp. 1972).

59. *Id.*

60. LA. R.S. 49:964 (Supp. 1972).

61. LA. R.S. 49:965 (Supp. 1972).