SOME ASPECTS OF AUTOMOBILE BODILY INJURY LIABILITY INSURANCE, 1925-1968: A STUDY IN SOCIAL ADJUSTMENT TO TECHNICAL CHANGE

DISSERTATION

Presented in Partial Fulfillment of the Requirements for the Degree Doctor of Philosophy in the Graduate School of The Ohio State University

By

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PART I
THE AUTOMOBILE ACCIDENT PROBLEM AND SOCIETY'S SAFETY EFFORTS

CHAPTER I
INTRODUCTION: THE AUTOMOBILE INSURANCE PROBLEM AS PART OF THE LARGER PROBLEM OF SOCIAL ADJUSTMENT TO THE AUTOMOBILE

The student of recent American social and economic history could hardly have avoided noticing in the past few years the wide concern over the so-called automobile insurance problem. Perhaps the most predominant concern has been for the injured victims. Automobile insurance companies were most intimately involved with this problem through providing bodily injury liability insurance and related coverages. Insurers (the term used for insurance companies in this study) were involved in seeking to prevent accidents as well as in seeking to alleviate the consequences. Insurers, however, have been at times apparently unaware of the importance of their role in prevention or lessening of injuries. This study seeks to present an historical survey and analysis of the experience of the insurance industry in pursuit of these ends.

Almost everyone is at least vaguely aware of the number of automobile accidents and of the tragically high toll in deaths and injuries which have arisen out of the increasing use of the automobile. This study begins in 1925, the year in which this phase of the traffic accident problem first received official attention from the national government, and ends in 1968. The latter year was chosen as simply a
convenient stopping point in relation to available materials that would discuss developments from some overall perspective, especially in relation to the implementation of important safety legislation of 1966 and certain suggested modifications in insurer policies and practices of the middle and late 1960's.

What might be called the social service function of bodily injury liability insurance is chosen for emphasis. This study is not intended as simply a chronicle of the major events relating to insurers that might be written from a narrower point of view, for example, from a basis that would stress a defense of private enterprise, the profit-and-loss record, or some other isolated experience of the insurance industry. It seeks to deal with industry experience as one aspect of the broader problem of the social adjustments to the advancing technology of the automobile. It is concerned with presenting and explaining the historical background of a private industry's attempts to cope with a difficult and complex social problem in its business operation.

The study begins with an historical survey of the traffic accident problem itself, including the traffic safety movement. Insurers, government officials, and various public and private interest groups were involved in a struggle throughout this period which failed to reduce the traffic accident problem to tolerable proportions. How insurers were affected by this problem and their struggles to overcome it is extensively treated. Later in the study the prime function of insurance, the alleviation of the financial consequences of automobile accidents, is surveyed.
An important part of the entire study involves society's changing expectations in regard to bodily injury insurance. There is considerable drama in the attempt of a large and important private enterprise to retain the essentials of that status in an age which moved so decisively toward government operated insurance. Social security legislation and unemployment compensation, first enacted in this period, and workmens' compensation, where it was operated through a state fund were the outstanding examples of government's increasing response to public demands for greater economic security. Auto liability insurers, setting out originally to insure their clients against what they might owe others because of negligence, came under strong pressures to compensate all accident victims whenever insurance was in any way involved. This was an important example of society's growing demand that the many absorb the losses of the few.

It is necessary to examine first the requirements of the legal liability system as it was originally intended to function. The expectations of society in regard to the function of insurance both as a deterrent to auto accident injuries and as a means to meet the financial consequences of accident injuries furnishes a contrast. This contrast between the operation of a private business designed for profit (as in the typical stock company operation) or for the sharing of risks (as in the typical mutual company operation) and the broad social purpose of accident prevention and economic security for victims provides the theme of this study.

The major question raised is: To what extent did the private enterprise insurance system meet the social demands place upon it? This entails a description of the problem of auto accident injuries for society and an
analysis of society's attempts to come to grips with this problem. It involves a description of the role played by insurers in society's efforts. This in turn then involves major secondary questions: What problems did society's expectations create for the insurers? Did the operation of the insurance industry, and more basically, the whole legal liability system, impede society's efforts to meet the injury problems associated with the automobile? To what extent did the insurer's operations reveal a concern with the social problems of automobile injuries? Conversely, to what extent has society revealed an awareness of the complications involved in adapting the existing legal liability system and insurance system to the injury problems created by the automobile? In what ways is the origin of the so-called automobile insurance problem associated with the history of bodily injury liability insurance? What adjustments or "cures" for the automobile insurance problem are suggested by this history?

Particular phases of insurer operations have received a great deal of attention in recent years. These phases involve, among others, the content of the insurance policy, the selection and retention of clientele known as the underwriting function, the policies and practices involved in the handling and payment of claims, and the rating or pricing procedures followed by the insurers. How and why these essentially internal matters came to assume such importance in the public mind is examined in connection with considering the broader questions mentioned above. It is in examining these essentially internal operations that the insurance industry can be evaluated as a vehicle for social adjustment to the automobile.

Society has often expressed desires to make important and sometimes basis changes in the legal liability and insurance system. These at
times have taken the form of new laws or proposed new laws. The reactions of insurers to these laws or proposals are important in evaluating their role in social adjustment. It seems appropriate to ask: To what extent have these actions revealed a progressive spirit among insurers? Does the pattern of interaction between society and insurers indicate that the society's purposes can be met through this particular private industry?

In relation to these questions certain definitions and explanations are in order before the history of the traffic accident problem and the safety movement are examined. First, the concept of liability. If one person, A, causes injury to another, B, A may be required to pay damages to B. This is a point of civil, usually common, law. Unless A voluntarily agrees to compensate B, B must bring suit to collect damages. In the ordinary operation of the law, B must show that A acted in a negligent manner. This manner is defined as one in which a reasonably prudent man would not have acted in the circumstance in which the negligence was alleged to have occurred; conversely, failing to act in a manner in which a prudent man would have acted in the circumstances is considered negligent. In nearly all states, B must himself be free of any negligence himself contributing to his injury in order to collect anything from A.

It is the potential costs of damages resulting from alleged negligence that liability insurance seeks to protect. Chapter Seven offers a complete explanation of the circumstances creating liability and the potential resulting costs of negligence.

There was strong interest on the part of the public and its legislators by the mid-1920's in compelling all automobile operators to be insured against their potential liability growing out of the operation of their
But many observers noted that even if all operators were insured, many auto accident victims could not be compensated. The law placed the burden of proving negligence on the victim. If the victim contributed to or caused his own injury, if proof of negligence could not be shown, or if the allegedly negligent operator had left the scene of the accident without being identified, the victim might not be compensated under liability insurance. These circumstances led to many intermittent efforts to substitute compulsory compensation insurance for liability insurance. Under this latter scheme, the concept of fault or negligence would have been abandoned and all victims made eligible for reparations regardless of negligence. Chapters Six and Nine describe in detail the problems and proposals in this regard.

The proposals for abandoning the negligence system most frequently met opposition from insurer interests who feared that the compensation system would eliminate private insurance in favor of a governmentally operated insurance plan. It also met opposition from many who opposed any form of compulsion in regard to the purchase of insurance. The argument most frequently advanced against compensation for all victims regardless of fault was that such a system would be detrimental to careful operation of the automobile. It was alleged that if the negligent driver were to be freed of the financial responsibility to his victim that an important incentive to safe operation would be eliminated.

An underlying question that society struggled with throughout the period of this study was whether the concept of fault should have been retained, modified, or eliminated altogether. A strong and almost constant pressure was placed upon the legal structure to modify or to eliminate the concept of fault. A countervailing pressure existed in favor of retaining the original system. This deeper social struggle over individual responsibility and the automobile seemed to toss insurers about like a small boat caught in a tempest. At the
same time that these contrary winds blew, society's leaders and the insurers struggled to gain greater numbers of converts for liability insurance without the necessity of making its ownership completely mandatory. Government adhered largely to the principle of retaining as great a freedom as possible for the public in deciding whether to buy insurance, but at the same time, it seemed to be forced nearer and nearer to absolute compulsion in order to highly vocal social demands.

How did society meet this contradictory situation? Was insurance, as it was constituted or modified, an acceptable means for meeting the challenges of the injuries growing out of the operation of the automobile? Does the apparent necessity to adopt laws with strong compulsory insurance elements constitute a judgment on society's reliance on individual responsibility? To what extent can the struggles with this problem be said to reveal the public's willingness or unwillingness to solve other social problems connected with technical change? Though these latter questions form the background for examining the specific problems of the insurance industry, this study does not attempt to supply definitive answers to them. Some tentative conclusions in respect to them, however, are drawn in the concluding chapter.

From the above it can be observed that bodily injury liability insurance plays two roles. It protects the automobile driver when it is alleged or proven that he has negligently caused a bodily injury to others. Secondly, it compensates the auto accident victim for losses because of his injuries; or it pays to his dependents or estate a sum of money when the above negligence has been demonstrated to have been the cause of the victim's injuries or death. As has been indicated above, and as is demonstrated in several places in this study, the second role is incompatible with the first. This is because of the natural antagonism between the company and the accident victim created by the legal system upon which the first role is based,
The attempted fulfillment of both roles has been significantly responsible for the hostile legal and social environment in which auto liability insurance has operated. This dual but incompatible role must be kept constantly in mind in any study of the social service function of auto insurance. It is necessarily a recurring theme in this paper. Society's creation and retention of this dual role perhaps reflects the nation's failure to examine deeply and thoroughly enough the problems associated with the automobile. The most basic problem, however, is that of automobile safety to which this study will presently turn.

In choosing a dissertation topic the writer decided to work in an area in which he has had some personal experiences and previous study. The author's master's thesis completed in 1952 was entitled "Social Insurance in Ohio, 1900-1929"; following receipt of the master's degree he served twelve years as a local agent for the Nationwide Insurance Companies of Columbus, Ohio. During this time he completed a number of agent training and education courses. Among these were a one year program on the fundamentals of property and casualty insurance sponsored by the Chartered Property and Casualty Underwriters (CPCU) association and a one year program sponsored by the Life Underwriter's Training Council (LUTC). These earlier studies and experience provide an enlarged background from which to view the "pure" research that has been done for this paper.
CHAPTER II
THE AUTOMOBILE ACCIDENT PROBLEM, 1925-1968

The suggestion has been made that the automobile is to twentieth century America what the frontier was to nineteenth century America. A thorough examination of this interesting thought is beyond the scope of this study. But is it evident that the automobile has made enormous contributions to the way of life of Americans and to almost all phases of business and pleasure in American society. It has also created problems that have a great impact. Among the most severe of these problems are certainly the deaths and injuries resulting from this revolutionary means of transportation. The hazards created to personal safety and economic security have been responsible for the spectacular growth of automobile bodily injury liability insurance. This growth of insurance reflects one of the chief ways in which society has attempted to make some of the adjustments required by the automobile.

To some extent this study is intended to be a contribution to the development of the business history of an industry. Primarily, however, it is intended as a study of the social policy implications of the history of the growth of an industry. The basic question examined in this chapter has to do with the relationship between the automobile or traffic accident problem and the automobile insurance industry. This basic question can be stated as "What were the effects on each
other of the traffic safety movement and the growth of automobile liability insurance?"; and "How did this relationship affect the total efforts of American society to reduce the hazards to life and limb growing out of the use of the automobile to a tolerable level?"

This study is essentially exploratory since neither a comprehensive history of the traffic safety movement nor the automobile insurance industry has been written. It is the goal of this chapter to suggest the interrelationships between the two and incidentally to point out some of the sources and approaches which may prove helpful towards research in the broader aspects of either.

The social function of insurance is to permit the rational pooling and sharing of hazards or risks. Society has also expected insurers to make a contribution to the overall reduction of hazards. This expected contribution, some of which insurers have voluntarily undertaken to attempt to make and some of which society has coercively demanded that insurers attempt to make, is a subject of this chapter.

Later chapters will examine the question "To what extent have the policies and practices of insurers made contributions to the easing of the remaining economic and social problems which the safety movement did not solve?" It should be pointed out that a basic contention of this chapter is that society's failure to otherwise make satisfactory advances in the control of the traffic accident problem has been responsible for assigning tasks to the insurance industry for which the industry was not equipped, and apparently could not, in its existing form, become equipped to accomplish. It should also be noted that society's failures in regard to traffic safety, including also those
failures in which insurers were assigned tasks to perform, helped to create, maintain, and worsen the hostile economic and social environment, as described in Chapter I, in which auto liability insurance has functioned.

This chapter contains four sections. In the first section a description of the generally-agreed-upon facts concerning the national traffic accident problem is examined. Primarily this consists of a tabulation of fatalities on a year by year basis since 1933 with five year averages for the years preceding. Trends that can be observed are noted such as the percentage of deaths occurring involving pedestrians, occupants in two or more car collisions, and persons killed when vehicles ran off the road. Also the trends in total deaths, in population and in mileage death rates are noted.

In the second section, the inadequacies of available data are examined. This section includes some analysis of the effects of a lack of statistics concerning the basic causes of accidents. A brief survey of the changing attempted solutions to the traffic accident problem is given in three sub-sections: the early years, about 1925 to 1932; the middle years 1933-1941; and the later years 1942-1968.

The great advantage of the automobile has been the speed at which it can travel. To, in some way, reduce the top speed of all automobiles to perhaps twenty miles per hour or less would doubtless reduce fatal accidents and serious injuries to a tiny fraction of their present level. But such a drastic measure would destroy much of the economic and social value of the automobile. Safety proponents generally have taken the more realistic view of being concerned with
achieving the safest possible highways consistent with an efficient automobile transport system. A few suggestions by safety proponents would have made the automobile into something resembling a slow, lumbering tank. But style, beauty, comfort and power, the latter including rapid acceleration and the ability to maintain high speeds have almost always been recognized as desirable, essential characteristics. The question has been "How can society have these desirable attributes in its automobiles and yet lessen to a tolerable level the casualty rates on the highway?"

Widely cited statistics reveal that by the end of 1968 more than twice as many Americans had been killed in automobile accidents than had been killed in all of the battles of all of the nation's wars. The significance of the losses caused by auto accidents can be approached in a number of other ways. Tables giving more detailed information on some of these approaches can be found in the Appendix. The statistics cited here are primarily those of the National Safety Council with occasional references to special limited studies by insurers and researchers. Later reference is made to tabulations published concerning the Ohio experience by the Ohio Department of Highway Safety.

One measure of the significance of auto accidents is the economic cost. An analysis of national figures for 1968 accident costs revealed that 11.3 billion dollars was attributed to auto accidents for that year; this was for example, approximately one-fourth the amount estimated to have been devoted to public education in the United States and it far exceeded the amount devoted to the space program. Of the 11.3 billion total, 7.5 billion was attributed to injuries and deaths and
3.8 billion to property damage. A further breakdown of the injury and death feature revealed that 2.9 billion was assigned as wage loss including wage loss either because of temporary or permanent disability or present value of future earning of those killed; another .8 billion dollars was attributed to medical expense. 3.8 billion was attributed to insurance administration costs including all administrative, selling, and claim settlement expenses for insurance companies and self-insurers and included all coverages written by auto insurers. This figure would also include whatever profits were made by the insurers. In explanation of the latter figure it is stated that the $3.8 billion "is the difference between premiums paid to insurance companies and claims paid by them; it is their cost of doing business and is a part of the accident cost total."

The economic costs are not complete nor are they comparable through the years. The figures given are not in constant dollars, that is, they do not reflect purchasing power in relation to a base period. Nor do the costs include the costs of certain public agency activities such as police and fire department or court costs. Neither do the above tabulations include damages awarded in excess of direct cost nor do they include indirect costs to employers whose expenses rose or production fell because of the injury or death of employees. Even without the inclusion of these items it can be seen that the costs are considerable. Over the period of this study they have increased sharply, usually year by year. The earliest cost statistic given by the National Safety Council is an estimate of the average annual cost from 1928 through 1932, a total of 1.3 billion. The annual figure for each
year rose gradually to 1.8 billion by 1937, dropped with the depression years of 1938 and 1939 to about 1.5 billion and remained below 2 billion through the gasoline rationing of World War II. The cost exceeded four billion by 1953 and reached eight billion by 1964, continuing to rise through 1968 for the twenty-fourth consecutive year. The costs attributed to auto accidents were approximately one-half of the costs attributed to accidents of all types during these years. A comparison of these accident costs with general cost of living statistics contained in the United Nations Statistical Yearbooks published in 1955 and 1968 were made by this writer. The rise in automobile accident costs from 1937 to 1964 was 400 per cent while the cost of living rose by approximately 200 per cent.

Of the 115,000 accidental deaths occurring in the United States in 1968, 55,200 were the result of motor-vehicle accidents this being more than double the next cause, that of falls, and over seven times higher than fires which were the third highest cause. Non-fatal auto accidental injury statistics over time are not given in the National Safety Council's Accident Facts except as noted above and except for the statement that approximately two million injuries disabling beyond the day of accident occurred in 1968. Therefore, the following data considers statistics in regard to fatalities only. Statistics based on the number of deaths in relation to population, number of registered vehicles, and vehicle miles are more significant than total death figures alone. However, some mention of the totals of certain years may be desirable.
The annual average total deaths from motor vehicle accidents (individual years were not available until 1933) for the period 1923-1927 was 21,800, this total rose until the average for the following five years was 31,050, the totals reached over 39,900 in both 1937 and 1941 having been in the 32,000 range in the resurgence of the depression in 1938 and 1939. After dropping sharply during the war years, the total exceeded forty thousand in 1962 continuing to climb sharply and exceeding fifty-three thousand in 1966. A challenging comparison in regard to the automobiles registered and the traffic death totals for the years 1953-1959 and the years 1959-1964 can be made. The 1953-1959 years witnessed a growth in auto registration of 15.8 million but a slight decrease in total deaths while the 1959-1964 years witnessed a similar growth in number of registered vehicles, 15.2 million, but the total number of deaths increased by over 9,000. Further analysis reveals that the population, vehicle mile, and motor vehicles registered death rates also dropped between 1953-1959 and rose again from 1959 to 1964.

Despite the increasing totals in costs and deaths, there are signs that the American public is making some successful adjustments to the automobile. The death rates per 100,000 population in themselves and at first glance provide little cause for optimism since the 1923-27 death rate was 18.8 and revealed an increase to 25.3 when averages were calculated for the period 1928-32. After this time the rate slowed perceptibly exceeding 30 only in the year 1937. After falling sharply during the war years to a low of 17.8 in 1943 the rate again climbed to over 24 in the years 1951 and 1952, then fell slightly
again remaining at or below 24 until 1964. At one point in this pe-
period, 1961, the rate fell to 20.8. Beginning in 1952 the rate rose
yearly through 1968, with the exception of a slight decrease in 1967,
reaching 27.6 in 1968, the highest rate since 1941. Perhaps the most
favorable comment that can be made in regard to the population death
rate is that the rate from 1963 through 1968, though increased over the
1950's, was somewhat improved over the period 1933 through 1938; and
this was so despite the fact that there were three times as many reg-
istered automobiles on the highway, over three times as many vehicle
miles driven and over two and one-half times as many drivers in the
later period than in the earlier period.

The much lower death rates per 10,000 motor vehicles registered
and per 100,000,000 vehicle miles driven indicated by the last sen-
tence of the above paragraph was not the result of a steady decline.
There was instead a series of declining years interrupted by years when
the rate increased significantly and finally a disheartening plateau in
which very little improvement was registered. This plateau was reached
in 1954 at a rate 6.07 deaths per 10,000 motor vehicles registered and
6.34 deaths per 100,000,000 vehicle miles driven. While in 1961 the
rates dropped to 4.98 and 5.16 respectively, in no other year in the
period 1954 through 1968 were the rates as much as one death per unit
of measure lower than the 1954 period. To illustrate this plateau
phenomenon one may consider the category of the death rate per
100,000,000 miles driven. This figure is usable since there is a very
strong correlation in the rate and direction of change between this
category and that of vehicles registered except in depression and war
years when older vehicles were retained in service longer than in more normal times, speed limits were reduced, gasoline and tires were rationed, the driver population varied greatly and other unusual circumstances prevailed.

In observing the vehicle mile death rate one finds (to the nearest per cent), a 14 per cent improvement when comparing the 1923-27 average with the 1928-32 average; and improvement of 23 per cent when one compares the 1928-32 average with the year 1938 (the 1939, 1940 and 1941 rates remained lower than the 1938 rate); an 18 per cent improvement from 1938 to 1946; (interestingly the rate did not go up in the immediate post war years or vacillate up and down as it did in the post depression years, 1933-37, but with the exception of slight increases in 1950 and 1951 steadily declined from 1943 through 1954) from 1946 to 1954 the rate improved a startling 35 per cent with improvements of nearly 10 per cent in each of the years 1947, 1948, and 1949, then after striking a slight plateau in the years 1950, 1951, and 1952, significant decreases of 6 per cent and 10 per cent were registered in 1953 and 1954. But at this point a long plateau is observed and one finds only 14 per cent further improvement when comparing the years 1954 through 1968. Further disheartening to those working to improve the traffic death picture was the fact that the rate for any one year from 1966 through 1968 was higher than the rate for any year from 1959 through 1963.

In summary, the total number of miles driven by all United States vehicles increased over eight times from 1925 to 1968 and the number of traffic deaths per year increased slightly less than two and one-half
times revealing that Americans have, when considering this total span of years, made significant progress in becoming acclimated to the automobile when the experience is observed from the point of view of total use of the vehicle. However, when the experience is viewed from the population death rate the conclusion concerning the public's becoming accustomed to the automobile is not an optimistic one. The years 1965-1968 present a slightly higher population death rate than the average of either the years 1923-27 or those of 1928-1932. The population death rate from motor vehicle accidents for 1968, for example, was within 10 per cent of the all time worst year of 1938. The society has demonstrated that it could absorb many more cars and that people could travel a great deal more by automobile without greatly increasing the population death rate.

Thus while automobile travel became significantly safer on a mileage basis during the period of this study, automobile accidents measured in terms of population death rate and in terms of economic costs relative to gross national product were a greater social problem during the 1965 to 1968 period than they were during the 1925 to 1932 period.

In other significant ways, the attention of society has been called to the extent and seriousness of automobile accidents as a social problem. Comparative statistics in regard to the death rate concerning automobile, bus, railway travel, and scheduled domestic air transport are available. The private passenger car was revealed to have been vastly and consistently more dangerous than the other modes of transport. For example, the average death rate for the passenger
automobile category per 100,000,000 passenger miles for the years 1966-1968 was 2.4. (The death rate was only one-half as high when considering only turnpike travel.) This was over nine times higher than the bus rate, ten times higher than the airlines figure and twenty times higher than the passenger train rate.

An examination of statistics covering 1950 to 1968 revealed that the auto death rate per 100,000,000 passenger miles varied from 2.1 to 3.0, while the bus rate never exceeded .26. Passenger train rates were .58 and .43 in 1950 and 1951 but thereafter never exceeded .27. Airlines figures varied considerably from year to year, e.g., .09 in 1959 and 1966; .12 in 1957 and 1963; 1.15 in 1950; 1.30 in 1951. The latter two figures however, were the only airlines figures exceeding .76. Obviously, the type of vehicle, planned operation schedules, trained operators, conveyance inspection, and careful accident investigations have all played a part in the safety achievements of buses, trains, and airlines. Obviously too, accident researchers consider the various aspects of the safety record of these commercial passenger conveyors when determining areas for study in regard to the ten times more dangerous private passenger automobile.

Society has effectively reduced the population death rate (figures are based on 100,000 population) in regard to work accidents, home accidents, and public non-motor vehicle accidents. This conclusion is based on statistics for the late 1920s and early 1930s compared to those for the late 1960s. For example, the work death rate was 15.4 in 1930 and in 1968 was 7.2; the public non-motor vehicle rate was 16.3 in 1930 and in 1968 was 10.3; the home death rate was 24.4 in 1930 and
in 1968 was 14.3; but as has been noted the auto situation worsened slightly. The motor-vehicle death rate in 1930 was 26.7 while the 1968 rate was 27.6. In the work accident area, researchers have noted that workmen's compensation insurance has helped to bring the noted improvement. Employers interested in obtaining lower-insurance rates have worked with insurance firms in improving the safety of working conditions. However, little optimism has been held out for the same effectiveness in automobile merit-rating or other group approaches. Auto merit-rating is a similar approach but lacks the possibility of group psychology or even coercion which can be applied on a mass basis by employers.

Another area that has concerned various observers of the traffic accident situation has been the fact that motor vehicle accidents strike particularly hard in the young adult age group. For example, 1967 statistics revealed that the 15 to 24 age group had a total death rate of 119 per 100,000 persons, of these deaths 49 on the average resulted from motor-vehicle accidents. This can be compared to a motor-vehicle death rate of 28 in the age 25 to 44 group, and 27 in the 45 to 64 age group. Death seems especially tragic both in personal and societal terms when adult life is just beginning and at a time when the victim has perhaps completed most or all of his training and education in preparation for adult life. This would seem to be one excellent reason for close examination of the effectiveness of driver education, training and initial licensing. Statistics were not readily available to indicate the historical persistence of the unequal statistics in regard to the age group situation. However, insurance journal articles
of the late 1920s and early 1930s indicate a great concern with the young male and his propensities for recklessness, carelessness, and speed competition on the highways. For a number of years insurer selection and rating policies and practices have reflected the higher risk involved in the insuring of the supposedly more aggressive young male as compared to insuring the supposedly more docile female.

Statistics have been compiled on the basis of the numbers of deaths resulting from collisions between automobiles and between automobiles and various other objects, and also on the basis of numbers of deaths from so-called non-collision accidents. Thus, pedestrian, automobile-train collision, and fixed object collision deaths are tabulated, and a category showing total deaths resulting from overturning and running off the road (non-collision category) is also available.

These seem to reveal only one significant historical change in the patterns of the ratios between the various categories. Approximately two-fifths of the total traffic accident deaths were pedestrians in the early years of the study (1928-32), while less than one-fifth of the victims were pedestrians in 1968. In the same approximate period the number of registered vehicles increased by about 300 per cent, while the population increase was only about 70 per cent. The greater availability and use of the automobile in 1968 as compared, for example, to 1930 doubtless accounts for much of this change in the pedestrian collision ratio. But also of probable importance were the increasing use of highways not open to pedestrian travel, as well as safety education, more carefully engineered traffic signs and signals, and greater general pedestrian and driver awareness of the auto hazard.
Statistics which would indicate which of these factors were most important are not available.

As might be expected the ratio of deaths resulting from collisions between one auto and another increased over the period studied. Of 31,050 deaths in the 1928-32 period, 5,700 were placed in this column with 22,500 of the 55,200 deaths in 1968 being so placed. A rather steady increase was experienced with the exception of the years when restricted driving was imposed during World War II. In that period the auto collision category fell more sharply than did the pedestrian or fixed object collision groups or the non-collision category. The latter, the non-collision category, in which area deaths resulting from over-turning or leaving the highway are placed, was the third of the three major areas contributing to the fatality statistics. It should be noted that whenever a vehicle left the highway before striking a fixed object the death was defined as in the category just mentioned, that is, a non-collision accident. Non-collision deaths were numbered at 9,100 in the 1928-32 averages or at about 30 per cent of the total deaths. The total for 1968 was calculated at 17,800 again about the same percentage ratio as the earlier years.

In a recapitulation, pedestrian deaths, by far the largest category in 1928-32, accounting for 40 per cent of the deaths in that period, had moved to third among the categories by 1968 accounting for less than 20 per cent of the total traffic deaths. Almost the exact reverse was true of the collision with other motor vehicle category as in the same period this category increased from about 18 per cent to roughly 40 per cent. Other categories than the three treated above
represented quite small fractions of the total with the only category exceeding 5 per cent in recent years, collisions with fixed objects, having significantly increased from about 3 per cent in the early years of the period of this study to about 5 per cent in the later years. Deaths from collisions with trains, street cars, and animal-drawn vehicles have decreased not only in proportion to other categories but also in total numbers.

The fact that changed proportions of the whole especially in relation to the pedestrian and other-vehicle collision categories have occurred has meant a necessity to shift emphasis in the attempts to arrive at exact causes and "cures" for the traffic accident problem. This is one of several examples illustrating how the problem has changed as auto technology and the modes of travel have changed. The problem has varied not only over time, but in relation to the concentration of population, laws and law enforcement practices, the geographical features of various areas, the changing concepts and technology of highway and traffic engineering, the purposes for which travel was engaged in, to say nothing of possibly changing human abilities, attitudes, and motivations concerning the use of care in avoiding accidents.

Literature concerning the traffic accident problem since World War II has widely emphasized the fact that far too little has been known about the causes of automobile accidents. Safety proponents have maintained that the statistics available do not give an accurate picture of what they set out to portray, that they are both inaccurate and incomplete. The source of the statistics just cited is the National Safety Council (NSC) which is the chief source for accident facts and
figures in the United States. Much of the information which the NSC makes available is gathered from local governmental sources which submit their figures voluntarily. Though cities, counties, and states generally use standard forms recommended by the NSC, this does not assure a standard of excellence in investigative procedures at the local level. The reports gathered from these sources have often differed widely from closely controlled studies of accidents. For example, state highway patrol investigations in Ohio over a number of years cited the use of alcohol as a factor in 18 per cent to 20 per cent of fatal accidents while controlled studies in many localities show the incidence to be 40 per cent to 60 per cent.

Police authorities, who gather much of the typical information available through the National Safety Council, have had other more immediately pressing duties at the scene of an accident than that of learning about and recording all of the details which contributed to the cause of the accident. In the country as a whole it has been extremely rare for other more careful means of gathering information to be employed. The knowledge and skills needed to determine the train of events and their interrelationships leading up to an accident tax even those to be found in a team of researchers made up of medical doctors, automotive and highway engineers, psychologists, and sociologists. It has been recognized in recent years that much more information is required for an understanding of the causes of accidents. Detailed study by highly trained professionals would be required in many varying circumstances since many accidents involve complex relationships between the driver, the automobile, and the highway.
environment. Only through such scientific studies of causes, recent opinion holds, can significant and continuing achievements in regard to safety be made.

Therefore, while it has doubtless been of value to know how many traffic fatalities were pedestrians, or in what age groups the victims were, how many were victims in one car accidents or at intersections (particularly at what intersections) or at certain definite other highway locations, or what driver or pedestrian law violations were involved, what kinds of fixed or movable objects were struck, or what injuries were sustained and from what sources they were sustained, in many cases even some of this rudimentary information was not gathered. Much other potentially valuable information was not even considered.

In the most elementary scientific terms, statistics have been gathered which reveal some reliable answers about the causes of highway deaths and serious injuries. It has been possible from available statistics to determine answers to questions asking who, where, and when concerning the victims of fatal or serious injury accidents. But it has not been possible to answer questions to any degree of certainty which ask why and how these accidents occurred. As an example a comparatively simple one-car accident may be considered. The one-car accident is chosen since a multiple car accident would usually be more complicated as more than one driver and one vehicle would have to be examined. Some of the exact causes, or contributing factors, to the accident which might be overlooked or unrecorded are indicated in the following familiar type of one-car accident.
For purposes of illustration, let us suppose that a driver has struck a large rock which had apparently rolled onto the highway from a hillside, then lost control of his vehicle and crashed into a guard rail and suffered an injury by being tossed across the car and striking his head on the car window. Assuming a police investigation were made, skid marks and damage to the vehicle might have indicated that the vehicle had been traveling at a high rate of speed, the driver might have readily revealed that he was exceeding the speed limit, again he might admit a speeding violation only upon close questioning by police and confrontation with physical evidence. The recorded facts available as accident statistics would be based solely upon what police officials decided was fact usually based upon readily observable factors at the scene. If the driver had been extremely tired perhaps dozing at the wheel, or emotionally upset, or perhaps under the influence of alcohol these might well go undetected. Physical deficiencies of the driver, of the car, and other deficiencies of the highway might well go unnoticed and unrecorded. Thus a degree of "night blindness," inadequate depth perception, badly focused headlights, insufficient brakes, a poor reflective surface on the roadway, or the failure to install a roadside fence to impede falling rocks, all might have been contributing factors to the accident at least some of which would have been unrecorded.

Many factors would have decided just what would have been recorded. Only recorded factors would later become available as data necessary to a determination of the contributing causes of such accidents. A thorough physical examination and a careful sociological and psychological study of the driver, a careful inspection of the
automobile by a mechanic, and by an automotive engineer, and an engineering and maintenance study of the highway all might have been employed. Research publications in recent years maintain that had careful investigations been made on large numbers of cases and the data recorded and codified, trained safety experts could through careful analyses have suggested practical means to cut the traffic accident rate. Importantly too, the investigators could have backed their suggestions with indisputable facts. Historical evidence points to the fact that such studies were non-existent until quite recent years and that even since they have been very rare.6

Also the evidence indicates that trained public traffic safety experts have been very few in number reflecting the traditionally low level of interest in safety as a government obligation.7 Despite the lack of scientifically gathered data and the lack of personnel capable of directing and interpreting such information, a major deterrent to safety has been to failure to implement measures widely agreed upon as desirable. The lack of sound and indisputable data and the lack of public will to carry out what was unquestionably known to be helpful measures were both responsible for safety movement failures. It is contended here that lack of knowledge, and false notions resulting from this lack, is the most basic reason for the slow and halting progress of the safety movement.

There was some official recognition in the early years covered by this study that much more statistical data was needed concerning the causes of accidents. For example, the First National Conference on Street and Highway Safety, convened by Secretary of Commerce Herbert
Hoover in 1924, had a committee concerned with the causes of accidents. The major attention of this and four succeeding national conferences held at varying intervals through 1934 was not, however, directed to a determination of causes of accidents. The main emphasis and most significant contribution of these conferences were the adoption of various codes of suggested uniform laws to deal with the public safety, the financial responsibility of automobile owners, and the protection of the automobile as property. The most obvious needs in the minds of the conferees seemed to be for establishing a degree of uniformity in rules of the road, and in penalties for violation of these, in driver licensing, and in developing a system of legal titling and registration.

The 1924 conference also had a committee on insurance which indicated a concern with both identifying and eliminating from the highway the "incompetent," vicious, or ignorant driver and with assuring that the driver who "caused" an accident would have the financial means of meeting the costs of deaths, injuries and property damage for which he was legally responsible.

The approach to achieving greater traffic safety in the middle and late 1920's was concerned with needed improvements in both human and physical factors but no evidence was found indicating a recognition of the need to develop facts concerning the interrelationships of these factors. The three basic factors in the traffic accident problem, the driver, the highway environment, and the automobile, were recognized in the conference literature and in other publications before 1930 but the concept of driver fault bore most heavily on the minds of safety proponents. As a result efforts were most concentrated in the area of
discovering and either improving the reckless and careless driver or
denying him access to the highways. Developing uniform signs, signals,
speed and licensing laws, for example, were intended to make clear
society's intentions to curb incompetency and recklessness and to pro­
vide clear standards for punishment when driving rules were violated.

Such statistics as were noted, other than total auto accident
deaths divided into the categories cited above, seem highly specula­
tive. While it could be shown that deaths of pedestrians exceeded
deaths from collisions between automobiles, it would seem certain that
President Coolidge was only repeating a guess when he stated at the
1924 Highway Conference that 85 per cent of pedestrian deaths were the
fault of the automobile driver. Even if based on police reports pre­
pared with care reasonable at the time, the statement seems high prob­
lematical. For example, it is highly unlikely that any except the most
obvious defects in the vehicle would have been considered, if even that,
and important highway defects may have been dismissed as insignificant
in assigning "fault." As late as 1963 it could be stated that "there
is not a single study of the causes of the typical traffic accident."10
Without knowing precisely the causes of accidents and without a testing
program to determine the effectiveness of newly launched traffic safety
measures and to suggest new changes as new technologies changed govern­
ment and private safety interests moved almost blindly and hesitatingly
forward.

Statistics were quoted above showing that the mileage death rate
for automobile accidents was considerably lower in the 1960s than in
the late 1920's and early '30's as was the death rate per vehicle. Also it was shown that the population death rate was only very slightly increased in this period despite the 300 to 400 per cent increase in the number of vehicles on the highway. This certainly indicates that safety measures were making some progress. For example, cities which instituted strong safety programs demonstrated much better than the country at large that a great increase in automobile travel could occur without also having a sizeable increase in the population death rate. But lack of knowledge has inevitably resulted in the establishment of many questionable safety measures.

Efforts of the Hoover Conference resulted in wide publicity for what was felt to be important safety specifications for highways and automobiles. The 1924 conference offered suggestions on the width of highways (22 feet), maximum safe inclination grades (6 per cent), for installation of guard rails, and for clear vision distance (300 feet). In regard to the automobile specifications concerning brake safety (the necessity of an emergency hand brake and the ability to stop within 50 feet while proceeding at 20 miles per hour), in regard to lost motion in the steering wheel (not over 15 degrees), better location of the brake, better mirror design, and improved bumpers were considered, also the necessity of a horn, an arrangement for clearing the windshield of fog and frost, amount of allowable toe-in, and maximum vehicle width (96 inches) were included in the recommendations.

The source of the above specifications is not stated. The Conference was made up primarily of private industry groups and it seems likely that the participating private groups, especially the auto
industry submitted these recommendations. Of the eight cooperating
groups only the National Safety Council, basically supported by private
funds, received funds from agencies of government and could be looked
upon as at least partially a spokesman for the public interest. A
listing of the other conference groups included the American Auto-
mobile Association, which though it had originated the national school
boy patrol in 1922 tended to represent the automobile owner and not
public safety as such, the American Electric Railway Association, the
American Railroad Association, the National Automobile Chamber of Com-
merce, the National Association of Taxicabs, and two insurer organiza-
tions—the National Bureau of Casualty and Surety Underwriters and the
American Mutual Alliance. From the general tone and content of the
Conference recommendations, it may be presumed that each group at the
Conference was assigned the task of making suggestions in its own area
of competence.

Insurer representatives were assigned a task related to develop-
ing statistical information about accidents. This was to consist of
keeping records concerning the causes and locations of accidents. Also
further records appropriate to developing safety activities were ex-
pected to develop from insurers making periodic vehicle inspections in
regard to brakes, steering, and clutch. It was not stated whether in-
surers were expected to conduct these investigations at their own, the
insured's, or at governmental expense. Neither auto manufacturers nor
insurers went on to develop studies or data which were then regularly
supplied to a government agency or other institution politically
charged with developing auto safety measures.
For proprietary reasons and for lack of governmental leadership many statistics which could have been obtained and which were necessary to developing better traffic safety programs remained unavailable through the entire period of the study. Of course, there has continually been much more information available than has been put to use. But also much mis-information has also circulated parading as truth. This latter has retarded the development of true and useful information which in turn has contributed to the traffic accident problem's remaining at tragic proportions. Many of the safety slogans have in fact been based on myths or on speculation. One such piece of mis-information or speculation concerned the existence of a class of elusive accident prone drivers. A certain type of psychologically "abnormal" driver was thought to cause accidents year after year. A journalist in 1926, referring to accidents over a period of years but citing no statistics to back his judgment stated, "It is a small number of drivers who are responsible for a large number of accidents." This representative statement indicated a major emphasis directed at discovering and removing from the highway what was thought to be a definable class of dangerous drivers.

The search for a fixed class of accident-prone drivers failed to develop a sound statistical base. The attempts to find a certain percentage of drivers who supposedly had "stable, inherent, personality traits" and to devote corrective measures to them side-tracked more productive traffic safety efforts. In recent years much effort has been made among safety experts to stamp out myths associated with or resulting from the accident-prone approach. Psychological studies made
in 1919 and the middle 1920's, it has been shown were misinterpreted in such a way as to promote the idea of the need to find ways to locate and "cure" or eliminate from the highway the "careless and incompetent" driver. By the early to middle 1930's this mis-interpretation was being attacked but some professional psychologists continued to pursue the search. The major detrimental effect may have been to fill the public mind with a simple answer to a problem which in reality required a very complex solution. The full implications of this statement will be examined later in the chapter. The point to be emphasized here is that the gathering of data that would reveal the complexity of the problem was neglected in favor of trying to develop techniques that would offer a broadly applicable simple solution.11

Statistics were also presented indicating that other factors in regard to safety were of less importance than concentration on the driver. For example, in 1926 the chief of the United States Bureau of Public Roads stated, "motor car design is responsible for only 5 per cent of the accidents, mechanically the modern auto is about as safe as the latest engineering and metallurgical science can make it. A modern motor car, with reasonable care and periodic adjustment can be depended upon to do just what the driver wants it to do."12 In 1932, in a study which took cognizance of contributory causes, it was stated that there were four major causes of highway fatalities. Defects in the motor vehicle were said to contribute to the cause of 9.6 per cent of these; the condition of streets and highways to 30 per cent; pedestrians actions to 43.8 per cent and the behavior of the motorist to 70 per cent. Both "direct" and contributory causes were considered in each
accident so that in the above percentages the total exceeds 100 per cent. The fact that a "direct" cause was chosen from among contributory factors was evidence of much more simplistic thinking than was considered permissible by traffic safety experts in the 1960's.

The idea of developing statistics around the concept of contributory factors has been slow to emerge. A number of writers in recent years have pointed out that traffic safety had just begun to be recognized as a science in and of itself by 1960's. Research tended to be compartmentally oriented and to pursue one phase of the problem associated with one factor. Psychologists, sociologists, optometrists and physicians occasionally examined the driver factor in highway accidents and developed some statistics related to their particular views. Automotive engineers made advances in the design and equipment and occasionally issued statistically based claims for safety innovations.

However, these groups were limited in their outlook and scope of their work by the demands of their professional obligations and by their inability to correlate their findings with data concerning other factors. Highway engineering was directly charged by governmental authority with considering safety. It was not, however, until 1933 that this branch of engineering began to receive important recognition as a profession. In that year Yale University became the first major university to offer graduate work in the field. Highway safety engineering was limited in its effectiveness since driver behavior and vehicle engineering data was lacking and since so little was being done to study the interrelationships of the three factors.
As a means for identifying and providing against the accident prone and financially irresponsible driver, the financial or safety responsibility laws were developed in the mid-1920's. These included semi-compulsory automobile liability insurance which was to provide financial means to pay for accidents caused by "at fault" drivers. Insurance company investigations of those seeking to buy policies and insurer claims records were to identify those who should not be entitled to drive unless the quality of their driving could be improved. In the late 1920's and early 1930's many proponents of traffic safety were interested in seeing all states adopt financial responsibility laws.¹⁴

The number of states with financial responsibility laws (first enacted in Connecticut in 1926) and the percentage of insured drivers, both of which rose from 1925 to 1935 at first were widely considered as an indication that important automobile safety progress was being achieved. By 1933 it was being recognized, however, that insurance was neither an effective safety measure as it had been touted to be by many, nor was it a very effective palliative as the Highway Safety Conference of 1924 had stated it to be. Calling attention to the misinterpretation of earlier accident proneness studies, in 1933 investigators stated that accident susceptibility was not a very stable factor. Further they pointed out that psychological tests purporting to measure susceptibility could not be expected to be valid since their predicting efficiency was rated only at .3.¹⁵ Insurance professor C. A. Kulp, in the same year reported the findings of a study which stated that neither compulsory insurance nor financial responsibility laws were affecting highway safety in any way. The study report
expressed doubt about the existence of a fixed class of careless drivers which the financial responsibility laws were intended to identify. It further cited the absence of studies comparing driving records of those insured and those uninsured.  

Despite the lack of substantiated claims to have improved traffic safety, financial or safety responsibility laws were not only continued but were widely adopted where not already in force and eventually greatly strengthened in all states. Investigators did not entirely abandon the psychological approach to discovering the cause of accidents and accident proneness and driver irresponsibility apparently continued to be considered very important by the public. While research was beginning to discredit the great emphasis on driver fault as potentially the most productive approach to safety, society continued to pursue it, apparently to the considerable detriment of the safety movement. By 1933, among the most knowledgable safety proponents, psychological testing came to be regarded as too expensive and too unreliable.  

In a well accepted study of the known causes of automobile accidents published in 1942, 20 bibliographic items which had publication dates through the 1920's and up to 1932 dealt with psychological factors. Three other items published in this early period dealt with vision defects or testing. The bibliography included a total of 300 items, the balance other than the 23 mentioned above have publication dates of 1933 through 1941. Interestingly only two of these later publications, to judge from their titles, gave main emphasis to psychological factors. In contrast the 277 items published in this
"middle" period reveal wide interest and explorations in many different phases of the traffic safety problem. State governments, however, continued to pursue the accident-prone-oriented financial responsibility avenue as well as other psychologically oriented efforts in a search for ways to curb "the careless and incompetent driver."\(^{17}\)

Statistics which showed more and more states to be enacting driver's license laws were looked upon encouragingly in the early 1930's. It was noted for example that "states with driver's license laws had 31 per cent fewer traffic deaths than would have been the case if these state's death rates had continued to increase after enactment of the laws at the same rate as in non-license states." However, no mention of other factors that doubtless contributed to this circumstance was made. The same article noted that only 14 states had laws concerning driver license examination which contained provisions for suspending these licenses upon certain traffic law violations.\(^{18}\)

Though in the 1925-1930 period it was certainly widely recognized that there were defects in the roadway affecting safety, and that there were on rare occasions defects in new automobiles, it was the driver who bore the blame for the vast majority of accidents. Once codes were developed and local or state laws enacted for clearly defining speed limits, stop streets, and other obvious signs and signals were installed, and once minimum equipment and maintenance standards for the vehicle had been promulgated, it was generally felt that all the rest was up to the driver. Even if there were roadway defects the driver was expected to adjust successfully to this circumstance. Though the most obvious hazards might receive attention by government, there were few
organized attempts to develop facts and figures systematically identifying these hazards and their relation to safety measures; by and large the driver was expected to cope with circumstances as he found them. Those who did not were regarded as abnormal, or accident prone, and it was this area as shown above that corrective measures were most sharply focused until about 1933.

However, by about this time it came to be quite widely recognized that efforts to bring a satisfactory reduction of the traffic accident problem through a direct attack on obvious common sense causes was not achieving adequate success. A realization of this circumstance resulted in numerous campaigns to discover "the cause behind the cause." Highway engineers recognized that roads were inadequate to carry automobiles at the speeds which most drivers tried to maintain. Widening of the highway, reduction in curve angles, the "banking" of curves, reducing the rate of inclination wherever feasible, and the division of roadways by which lanes of traffic going in opposing directions were separated by a median strip, the development of merging roadways rather than direct intersection, and the concept of limited access were all developments in the middle and later 1930's. They permitted higher safe speeds and the elimination of the dangerous so-called turbulence associated with continual slow downs. With the cooperation of the Bureau of Public Roads (after 1938 called the Public Roads Administration) in the United States Department of Commerce and state highway departments, professional highway engineers were able to accumulate the data needed to make the developments required for unimpeded, relatively safer travel. These developments culminated in the building of the
Pennsylvania Turnpike, the nation's oldest super-highway, 160 miles of which opened in October 1940. "Here was a limited access road designed and engineered for safe and speedy travel without a pedestrian hazard, a crossroad, or a stoplight. A grass medial strip 10 feet wide divided the east and west bound lanes. Curves were gentle; grades did not exceed 3 per cent; and drivers enjoyed a minimum sight distance of 1,000 feet."

The highway engineering advances created different problems but the new turnpike style roadway proved within a few years to have only one-third to one-half as many fatalities as the older style roadways. Doubtless this development helped to relieve and re-focus the earlier emphasis which had caused the driver to receive almost exclusive attention in corrective measures. Statistics gathered from the Pennsylvania Turnpike experience brought adjustments in that highway and helped to furnish specifications for other toll roads and for the interstate system of primarily federally financed highways which were begun in the post-World War II period. It is instructive to note that for the first six months of its use the fatality-per-vehicle-mile rate on the Pennsylvania Turnpike was double that for the United States as a whole. It was from this experience and of other turnpike-like highways in Connecticut and New Jersey that the engineering advances were converted to safety advances. Pennsylvania officials found, for example, that unlimited speed seemed to be unwise.

The total reduction of fatal and injury-producing accidents has been slow as new problems have arisen in connection with the newer type of highway. The intersection accident and the pedestrian accident were
replaced as leading types by rear-end collisions and one-vehicle accidents in which the driver fell asleep or otherwise lost control of his vehicle and left the roadway. The incidence of these and the corrective measures applied will be examined later in this chapter as they did not become prominent until the post World War II period.\textsuperscript{20}

The chief traffic accident problems associated most directly with highway conditions both before and after 1941 continued to involve streets and highways of the older type. Concerning these it was considered prohibitively expensive to replace the older roadways with the newer despite the proven greater efficiency of the latter. By the middle 1930's drivers were operating vehicles capable of 80 to 100 miles per hour on roadways almost all of which were designed for a speed limit of 35 miles per hour recommended in the Hoover Conference report of 1925. Even at 50 miles per hour most rural roads permitted little or no margin of driver error at such places as sharp curves, blind hilltops, narrow shoulders, or view-obstructed intersections. Highway engineers developed in this period the principle of "forgiveness" features in highway design permitting a driver to discover and correct for mistakes before becoming involved in an serious injury-producing accident, these only slowly became widely recognized and therefore were slowly applied. This slow application resulted at least partly from the lack of an adequate measurement of the relative importance of highway features among the total of contributing factors.

Since it was unquestionably beyond the resources of the nation to do more, selective improvements in the highway system were undertaken. A survey of the nation's existing roadways including safety and
other items related to their efficiency was undertaken for the first time in 1935. This survey required matching funds from the states and though detailed maps of all 3,100 United States counties were prepared in which the widths, alignments, and traffic densities were determined, studies coordinating locations with other contributing factors in accidents were initiated in only a few states by 1941. The failure of most states to allot funds (these would have been matched by federal money) for this phase of the survey, resulted in a failure to come nearer to an accurate, statistical definition of the traffic accident problem. Accident research has recognized in recent years that the absence of such data has played an important part in the failure of the public and its government to allot more funds to achieving highway safety.

Nevertheless, federal and state planning surveys did make some progress in defining the responsibility of the highway for accident causation. Spot improvements were undertaken in Ohio and other states where a high incidence of injuries and fatalities occurred to reduce excessive curvature, flatten heavy grades, widen pavements, develop grade separations and the "cloverleaf" pattern for intersections, to lengthen clear vision, improve the skid resistance of surfaces, and install median separations for opposing lanes of traffic. The installation and more efficient placement of signs, sidewalks, and lights. The painting of center line, edge line, and "no passing" lines were developed, tested, and came into wide use during this period. The cities, of course, had special problems related to achieving a smooth flow of safe traffic where the grid-work pattern of intersections were
involved. City statistics naturally indicated that intersections and pedestrian death and injury were the areas of major concern. Local commitment by the cities to solutions was perhaps much more important than nationally applicable data but the two factors were nevertheless dependent upon each other.

The 1933-1941 period was marked by a new slogan for traffic safety. The literature widely refers to achieving greater safety through "engineering, enforcement, and education." When highway engineering had reached the point in the middle 1930's that it "could make a road safe for any given speed," it came to be clearly recognized that drivers operating more speedy and powerful automobile negated many of the engineering gains. Such drivers as those arrested for "trying to do better than ninety" on Connecticut's Merritt Parkway, nor even those operating within Connecticut's conservative speed limit of fifty miles per hour, would have been able in many cases to make corrections required when other drivers made unexpected moves such as slowing down preparatory to stopping, pulling into the passing lane, or avoiding some impediment suddenly discovered in the highway. Traffic safety proponents during this period increasingly realized that scolding and cajoling or otherwise harassing a supposed small percentage of "careless and reckless" drivers would not bring the problem of too many serious traffic accidents within tolerable limits. Also it was realized that complete safety engineering of the highways would not sufficiently control the problem even if all of the "nuts behind the wheel" could be eliminated. It became recognized that many of the 80 per cent to 90 per cent of all drivers who were supposedly "safe" would develop
a mania for excessive speed on the improved highways, making them perhaps less safe than they were before improvements were made. Education then became accepted as the most significant way of acquainting the driver with the complicated task of safe operation and impressing upon him the dire necessity of its accomplishment. The passage and enforcement of adequate laws was looked upon as a further necessary means of education useful to cause the public to conform to accepted driving behavior whenever milder educational means failed.22

Facts and figures then were developed to convince the driver of the dangers of speed, the use of alcohol, inattention to driving, poor maintenance of the automobile. Defensive driving ("driving as though everyone else on the highway were a maniac") was an early approach to driver education; later it was toned down to simply a cautioning message that one should be aware of the possible mistakes which other drivers might make. Voluminous literature was produced by the late 1930's on various aspects of highway safety engineering, enforcement, and education. But over-all coordination and correlation of the various pieces of available information was lacking. Harry R. DeSilva of Yale University compiled a bibliography of 300 important publications in the field of traffic safety for his book Why We Have Automobile Accidents (1942). The listed items reflected the vastly scattered and uneven treatment accorded traffic safety. Only one of the 300 items, to judge from the titles, was a book length treatment of the traffic accident problem as a whole.

The preface to DeSilva's book states that little organized information exists on the automobile casualty problem. He says, "Outside
of a few specialized technical books, mostly on engineering and enforcement phases of safety, some elementary instruction manuals, an assortment of undigested statistics, and a considerable amount of twaddle, there is a glaring deficiency of literature on either the theory or practice of accident control." DeSilva notes that the task of building up a science of automobile accident prevention had hardly begun. He mentions many types of persons and organizations which had manifested an interest in a particular phase of automobile safety but he noted that such interest as that of insurance officials, psychologists, traffic and automotive engineers, local voluntary safety council leaders, educators, police officials and state motor vehicle administrators could devote little of their time to accident prevention. Safety with these persons was a side line, he pointed out. Specialists such as these could usually appreciate only one solution to accidents and seldom collaborated with other specialists.

DeSilva called for a consideration of highway safety to become "as much a public responsibility as wild life and forest conservation, pest control, and the eradication of communicable diseases." Further he noted that the public had been "muddling along" and "floundering in search of little remedies for large troubles." He offered his book as an assessment of the relative significance of these attempts in which he sought to give various authorities a better appreciation of the problem as a whole. The excellent evaluations and suggestions which DeSilva made in the early 1940's furnish both a useful commentary on the history of the traffic safety movement to that time and in most respects an ideal pattern for approaches to the problem that were still
valid in 1968. This will be borne out in later commentary from such authoritative studies as Haddon, Suchman, and Klien's Accident Research and the Arthur D. Little, Inc. studies The State of the Art of Traffic Safety and Cost Effectiveness in Traffic Safety all published in the middle to late 1960's.

All these references call attention to the very little that could be proved or reduced to a reliable statistical basis by available studies. All point to the enormous public indifference and to the lack of dealing effectively with the complicated problem. This did not mean that nothing was done but rather that what was done was in many cases ineffective, inefficient, spasmodic, and simplistic, and created a false image that everything that could be done was being done. In this way, mistakes of the past, such as continued over-reliance on insurance companies to find and cure poor driving, were allowed to go forward largely unevaluated.

It is beyond the scope of this study to list and analyze the contributions of all of the organizations which took an interest in traffic accident problems. However, the multiplication and growth of such public and private groups in the 1930's indicates the great variety of interests involved in offering solutions to the problem. It also indicates the need for correlation and coordination among these groups. The absence of an effective central agency to develop coordination brought about confusion and duplication. This in turn helped to perpetuate and intensify the use of unwise social policies toward the traffic accident problem. Public concern over the problem eventually
became more intense. This affected the auto insurance industry in many ways that are evidenced throughout this study.

Among the organizations involved in various phases of the traffic safety movement perhaps the National Safety Council should be mentioned first. By the middle 1930's it had become the chief source of traffic accident statistics such as those quoted earlier in this chapter. A concern for industrial safety by the Association of Iron and Steel Electrical Engineers led to the founding of this organization on October 13, 1913. At first known as the National Council for Industrial Safety, its fourteen charter members, who contributed from $50 to $400 to its initial treasury, were made up of insurance companies and associations, steel companies and other industrial corporations. Some interest was manifested in automobile safety in the early years and leaflets and films were provided by its membership for public traffic safety education as early as 1914. In that year the name was changed to the National Safety Council and in 1915 a public safety section was formed concerned primarily with traffic safety. In 1924 the Council was one of two organizations which requested Secretary of Commerce Hoover to call the first National Conference on Street and Highway Safety. During that year the Council was also actively urging that a standard form for gathering accident data be developed. In 1929 the Council formed a separate traffic safety division and in 1953 the Council received a federal charter from the United States Congress charging it with the responsibility to "arouse and maintain the interest of people in safety and accident prevention, and to encourage the adoption of safety methods."
In the 1930's and later the National Safety Council remained a private non-profit organization fulfilling a public function. It has collected, analysed and published data, but has conducted little direct research, and has been subject to no overall scrutiny by government. Some critics have charged that the Council has studiously avoided alienating certain parts of its membership such as the automobile manufacturers. In the absence of a thorough public investigation, allegations concerning the Council's avoidance of emphasis on certain approaches have remained only allegations. Government regulatory bureaus themselves, it has been shown have been subject to such criticism. Since it is recognized that institutions tend to perpetuate themselves often by overestimating their accomplishments, government might better have taken a direct approach to an over-all attack on traffic safety rather than rely on private sources such as the Council. Public tax support and the coercive powers of a government agency to fulfill or to supervise the functions assumed by the Council might have been expected to achieve greater balance and progress in traffic safety.

The limitations of time and space and readily available historical information preclude lengthy treatments of prominent organizations who contributed important statistical and other traffic safety information. At least two founded in the mid-1930's seem to deserve special mention as illustrations. The first is the Automotive Safety Foundation. The ASF was created in June, 1937 following a series of organizational meetings by leading auto manufacturer representatives dating from 1935. This independent organization grew out of the work of the Automobile Manufacturers Associations (AMA) safety committee. By 1961
the ASF through contributions from 600 companies and associations di-
rectly or indirectly involved in auto manufacturing and sales had de-
voted $23 million toward attainment of its major objectives which in-
cluded reduction of the accident toll and development of roadways and
parking facilities.25

During the first five years of the existence of the ASF its sole
objective was traffic safety. Its principal activity was the making of
grants to "national, regional, and some state organizations with a
major interest in highway transportation, and a demonstrated record of
accomplishment." For example, a grant was made to the American Asso-
ciation of Motor Vehicle Administrators to promote the adoption of
uniform state motor vehicle and driver licensing laws. Another grant
was made to the Highway Research Board for a study of the basic highway
laws of the states with the intent of encouraging legislatures to mod-
ernize these laws. Statements concerning the ASF's early years reveal
it to have been concerned with the complexity of the traffic accident
problem. The ASF recognized that the chief responsibility for safe
traffic movement rested with public officials, and that "rational and
scientific methods embracing all elements" in a coordinated national
attack was required. It has insisted that organizations receiving its
grants work together and support the official organizations.

Despite strong evidence that the ASF has viewed the traffic ac-
cident problem as complex, requiring government leadership and a co-
ordination of all activities, the impression that the major motivation
of the association was to advance the wider use of the automobile can-
not be escaped. It remains unknown as to whether the ASF focused on
projects and research which seemed best designed to advance the sale of automobiles. It would, however, seem naive to believe that its first president, Paul G. Hoffman, then president of the Studebaker Corporation, and its other automatically-oriented officers could have avoided accentuating programs which would promote auto sales. Again significant amounts of information available to public officials came from through the activities of a private association whose first obligations were to industry and not to the public at large. Government officials lacked personnel and funds necessary to make its own evaluation of the information it was supplied.

It should be noted that the ASP did not devote its funds and efforts to making the automobile itself safer. Its emphasis was on laws and law enforcement, highways, driver and highway engineer education, and parking facilities. The emphasis chosen reflected a desire, no doubt, to create a physical, social, and legal environment conducive to the expanded use of the automobile. Significant warnings concerning the future of the automotive industry were beginning to become evident. Traffic fatalities for 1934, 1935, and 1936 had shown a sharp increase over the early years of the 1930's. Greater public concern, including criticism of auto engineering itself, was becoming more evident. John J. Maher in his book on traffic safety *Mind Over Motor* (copyright 1937) was an exception. He praised the automobile as "one of the finest products of a mechanical age." He criticized instead the attitudes and abilities of the driver and the manner in which the courts handled traffic offenders. But unlike Maher and many earlier writers who quoted statistics such as "only 5 per cent of the accidents can be
traced to vehicle fault," a number of studies appeared from 1933 to 1941 which took a far less sanguine view of the role of the automobile as a cause of accidents. No doubt these critics of the design, styling, and engineering of the automobile played some part in the decision of the Automobile Manufacturers Association to launch the ASF.

It is an interesting, but probably coincidental that the ASF was launched in the same year (1937) that Harry Armand, the editor of Safety Engineering, began to publish a series of articles entitled "Make the Automobile Safer." These articles called for essential changes, especially in the interior design of the automobile, which would lessen the driver's or passenger's chances of receiving serious injury when thrown against some part of the vehicle as a result of a collision or upset. These articles presented a challenge to automobile engineers who had been organized since early in the twentieth century.

The Society of Automotive Engineers (SAE) founded in 1905, is described as "the principal institution for automotive industry coordination of decisions concerning the technical issues in vehicle safety." The work of this association, devoted as it was to the automobile itself and having a close connection to the auto manufacturers, may have, so far as the manufacturers were concerned, sufficiently covered the safety aspects of the vehicle itself. Despite the efforts of the engineers, considerable criticism was being directed at automobile safety features or the lack thereof. DeSilva's work Why We Have Automobile Accidents (1942) listed various engineering aspects of the vehicle which were inadequate: limited field of vision, inefficient and
untrustworthy brakes, lack of driver comfort, poor steering ratios, inadequate seat adjustments for drivers of varying physical attributes, a lack of padding and seat belts, inadequate protection against carbon monoxide, falsely advertised fog-penetrating lights, and poor distribution on the auto frame tending to instability.

DeSilva felt that it was obvious that manufacturers were being influenced by competitive sales pressures to ignore installation of many obvious safety features. In 1941, Arthur W. Stevens, a member of the SAE, published a book entitled *Highway Safety and Automobile Styling* in which he was critical of a number of the same features which DeSilva discussed and in which he stated, "the public is just the whipping boy of the industry's style experts." He further charged that, "the recommendations of automotive engineers were pushed aside in favor of color, chrome, and class." It was the mid-1960's, however, before government sufficiently recognized the importance the industry's continuing reluctance to take voluntary action in most of the areas. The federal government then began to set a significant number of standards in automobile design and engineering which the industry was required to meet. Thus the point was reached at which actions the AMA, ASF, and SAE had opposed had come to seem necessary to the United States Congress.

The second of the two organizations originating in the 1933-41 period which have been chosen for special comment is the so-called West Point of traffic policing, officially the Traffic Institute of Northwestern University, located at Evanston, Illinois. The Institute, founded October 14, 1936, grew out of efforts within the Transportation
Center at Northwestern University and was financed in large part in its early years by the Automotive Safety Foundation. It received strong support also from the Kemper insurance firms (Kemper Insurance, Lumberman's Mutual Casualty Company and American Motorists Insurance Company). The Traffic Institute marked the beginning of police traffic education at the university level. Its continuation represents acknowledgment of the need to broaden police traffic education programs as part of achieving successful social adjustment to the automobile.

The Institute has represented the attempt to apply the best available information on the role that police play in traffic enforcement procedures. It has helped to bring into practice the concepts of educating and reminding the great majority of responsible drivers whose lack of knowledge or monetary lapses have been important contributors to the total traffic accident picture. The same public inclinations that had led to the earlier concentration on detecting and correcting a small minority of accident repeaters had earlier led traffic police to concentrate efforts on arresting this type of driver. Institute trainees learn to appreciate their role as educators and how to aid in developing and maintaining a smooth flow of traffic conducive to preventing accidents among the vast majority of normally responsible drivers. They also learn investigative techniques for traffic record purposes and how to minimize the injuries of traffic accident victims.

Many small towns and cities or county sheriff departments have found it impossible to finance the Institute's nine month course for any of their personnel. However, enough graduates have launched
training programs in various larger cities and states to have been widely influential among traffic enforcement personnel. The effects of programs in various cities have indicated outstanding success where carefully researched and well-administered traffic police activities have been launched. The experience of Los Angeles and Chicago may be cited as examples. In the former the traffic death (per 10,000 registered vehicles) was 8.9 in 1941, but had dropped to 3.0 in 1960; in the latter the figures were 7.0 in 1948 and 2.7 in 1960. In comparison the death rate nationally on the same basis was 11.45 in 1941, 7.85 in 1948, and 5.12 in 1960. Obviously both cities showed gains distinctly superior to those of the nation as a whole. It cannot be flatly stated, of course, that the improvement came only or even partly as a result of better police enforcement, but cities sponsoring enforcement programs improved significantly more than those without them.

As new knowledge on the effective use of police manpower and the development of police talent has become known the Institute has become a leading way for this knowledge to become widely diffused. The development of this knowledge has, however, been severely limited by the generally poor condition of research into the total traffic accident problem. For example, while one part of the public has desired greater routine police speed checks some research has indicated (apparently not definitively) that routine highway speed checks are a waste of manpower.

In 1968 authoritative statements were being made that only a handful of experts could be regarded as devoting their full professional talents to traffic safety, and in the 1933-41 period probably the number of experts could be counted on the fingers of one hand.
Private associations then represented a major portion of the attention being given traffic safety outside of local groups or government bureaus. In both private associations and government agencies highway safety was usually only one of several agency interests. In order to indicate their nature a listing of some of the major public and private associations follows.

An organization founded in order to obtain federal highway funding, but with some tangential interest in safety, was the American Association of (state) Highway Officials formed in 1914; the traffic engineers formed a professional association in 1930; the American Association of (state) Motor Vehicle Administrators (for title registration, and vehicle and driver licensing) was established in 1932; the International Association of Chiefs of Police was founded in 1936; the Center for Safety Education at New York University established by the Association of Casualty and Surety Executives was founded in 1938. The American Automobile Association (primarily auto owners), founded in the pre-1920 period, and already mentioned for its founding of the schoolboy patrol in 1922, was active in the safety movement in the 1930's, for example, in issuing pamphlets on glare resistance, pedestrian protection and "sportsmanlike" driving. A great number of other organizations and special committees within organizations including those of physicians, surgeons, optometrists, attorneys, highway builders, and others contributed to traffic safety data and problem analysis.

In addition, various state and local police and administrative groups such as the State Governor's Conferences, state, city, and
county highway departments were active in traffic safety. The chief
official federal agency for dealing with matters of highway safety was
the Bureau of Public Roads in the Commerce Department. Its commis-
ioner (or director) from 1919 to 1953 was Thomas H. MacDonald. Commis-
sioner MacDonald outlined the role of the Bureau as advisory to the
states. In 1938 he advised the creation of a new agency with broad
authority to correlate the several scattered federal, state, local, and
private highway safety activities which would then work more effec-
tively to encourage governmental action at state and local levels. Thirty years later such an agency had just been created and was barely
beginning to function.

The World War II years were credited with achieving a better co-
ordination of traffic safety measures. Forty-eight organizations co-
operated in forming a committee called the National Committee for Traf-
cic Safety in order to bring about a nationally coordinated program
and effort designed to aid the war effort. This effort laid the foun-
dation for convening the President's Highway Safety Conference of May
1946 which it has been said, "started a new era in traffic accident
prevention." This conference "assembled in one place all of the best
recommendations on accident prevention and provided machinery for
getting federal, state, and city governments and public support agen-
cies to coordinate their efforts in securing adoption of conference
recommendations." The conference was made up of government officials from the fed-
eral, state, and local levels whose duties involved traffic safety.

From the private sector various highway users such as the trucking
industry were represented, also safety organizations and industry, including the insurance industry was represented. The group was chosen with traffic safety public relations and promotion in mind. It did not represent expert opinion or a sharing of original research findings. Characterized by flamboyant oratory in which facts were loosely handled, its lasting contribution was the development of an Action Program designed to be implemented by state and local officials.32

The Action Program became a "master plan" providing guidelines for state and local action in regard to laws, traffic records, education, enforcement, engineering (vehicle and roadway), motor vehicle administration, public information, and public support. This provided an overall outline for an ideal program against which states and local communities might measure their own legislation and activity in safety. The Action Program was similar to the eight emphases of the Hoover Conference of 1925 and to the Bureau of Public Roads study in 1936 which had called for uniformity in laws, skilled accident investigation and reporting, and vehicle inspection. It was also similar to the earlier studies in the fact that it did not call for federal laws or programs but rather emphasized what could be done by state and local government and by private groups or individuals.33

The 1946 Conference Action Program had the prestige of the President's office, and as revised in 1949 and 1960, provided an organized basis for safety-interested groups, public and private, to determine priorities. In the safety literature of insurer groups, for example, one finds continual references to the Action Program. The literature often listed the entire program and placed the particular subject of
the pamphlet or other publication within the context of that program. This meant, of course, that coordination of safety efforts had been promoted, but it also often meant that the Action Program was taken by the public to be the final, authoritative word in regard to traffic safety. Much of the program in fact was based on the judgment of non-experts and was likely to be far from being the final word in research-based activity. The result contributed to the fact that the public remained painfully unaware of the need for further research.  

As revised in 1960 the Action Program included these changes in major categories of emphasis: enforcement was broken down into police supervision and traffic courts and, significantly, research was added. This latter perhaps hastened the appearance of three major research-oriented books in the middle and late 1960's dealing with the overall problem of the state of the art of traffic safety and the adequacies and inadequacies of research into the field. The 1946 President's Conference and the resulting Action Program led to the establishment of a permanent national committee for promoting application of the principles developed. This was the President's Committee for Traffic Safety created by President Eisenhower in April, 1954. This provided the prestige of the President's office for a continuing, on-going effort to "promote the application by public officials of the principles, procedures, and techniques of the Action Program and to develop citizen support for these officials." This Committee relied on 36 national non-profit organizations to do the work of overseeing the implementation of the Action Program. These groups were various business and professional groups from industry and government at all levels.
Again, however, there was little federal government financial support either for the activities of the President's Committee or for general traffic safety activities not directly connected with highway building. Financing came basically from private associations. Until 1966 the federal government with the exception of special grants for highways remained basically advisory to the lower levels of government rather than directly active in safety measures. It stretches the imagination to think of the presidential level conferences, committee, and action program as a "new era in traffic safety." The traffic safety movement remained, as it had been earlier, a matter of concern primarily to state and local governments, to private groups and other interested citizens acting unofficially.

Nonetheless, there was reason for observers to think in the first ten to twelve post-war years that a new era in traffic safety was beginning. As noted earlier the death rate per one hundred million miles fell encouragingly in these years. Also, in the years 1946 to 1957 the crucial population death rate remained 25 per cent or more below the shocking death statistics pre-war years of 1934 through 1938. Those who desired to avoid federal compulsion in the traffic safety movement could take heart from the fact that state and private group leadership was making significant headway.

This writer located no study in which an author commenting on the total problem ventured to claim knowledge of the factors chiefly responsible for this decrease. Various groups claimed large shares of the credit. For example, auto manufacturers have claimed an important share of the credit because of engineering advances in the vehicle.
Driver education experts, safety councils, law enforcement officials, and insurers, through education efforts, claimed to have made advances in driver skills and attitudes, traffic engineers and highway administrators have pointed to improved roadways. Various professional medical associations have made claims in regard to discovering and helping to correct or have patients guard against eye defects. Doctors and hospitals gave better and more prompt care to the injured. Physical or mental ailments or deficiencies have been identified as having specific effects on driving and certain corrective measures have been taken. Judges, attorneys, and legislators could claim credit because of enlightened traffic laws. The society itself could be said to have become more accustomed to the automobile. A chief point here is that the greatly expanding interest in traffic safety that was shown to have come into existence on a broad front in the 1933-1941 period and medical advances made in World War II seemed to have begun to pay off in greater safety accomplishments in the post-war period. Some writers gave great credit to the coordinated Action Program mentioned above. Certainly no one could correctly apportion credit among the factors nor could any one know with certainty all of the factors involved.

A report published by the United States Department of Commerce in 1959 foreshadowed the highly critical studies of the traffic accident problem that were to appear in the 1960's. This study, which was undertaken in 1956 in connection with beginning the construction of a massive 41,000 mile interstate highway system, forcefully pointed out the very limited amount of research that was being conducted. The study focused on the fact that the President's Committee on Traffic
Safety was made up mostly of volunteers and that no governmental group existed at the federal level for developing detailed and well-researched official programs. It was suggested that a permanent federal agency with the status and capabilities to ascertain the legislative and administrative needs in all areas was required. The leadership, guidance, and coordination of traffic safety measures, it stated, could be centered in the federal Department of Commerce. The new agency should become responsible for making reports to the President and Congress and should advance proposals for executive action where feasible and new legislative actions whenever desirable. This marked the first time that federal government action on a broad front had been urged by government representatives acting in an official capacity.

Among the specific problems needing study were mentioned the need for a federal driver register which would provide the various state highway licensing bureaus or traffic courts with information on the past record of drivers in a former state of residence. In this way the problem driver could be more thoroughly and accurately held accountable for a chronic record of offenses. The study also introduced a suggestive investigation made in relation to speed laws. The investigation made by the Bureau of Public Roads indicated that variations in speed, or "traffic turbulence," among vehicles using a highway were usually far more dangerous than high speed itself. This helped to promote studies leading to methods for developing a smooth flow of traffic and away from efforts to enforce unrealistic and unneeded speed limits. That study also emphasized the need to study the much higher fatality rate of accidents occurring in the very early morning hours.
study of the federal role emphasized the doubtful validity of problem "cures" based on separate studies of the driver, the road, and the vehicle, or upon statements as "90 per cent of the causes of all accidents reside with the driver."

In commenting on the interconnectedness of the driver, road, and vehicle, the 1959 study of the federal role noted that a lack of causal and contributory information existed. The report remarked that "no competent analysis and digestion of accident facts existed nor could such analysis be made on the basis of past statistics because of the insurmountable problems in categorization and interpretation." In the matter of driver factors related to the total problem the study pointed to such needs as trying to determine what caused the tiny percentage of the driver population who regularly drove more than five miles above the speed limit to do so (seeking the "cause behind the cause" which Arthur Stevens had referred to in 1941). The study strongly questioned the still prevalent idea of accident proneness by noting that removal of chronically poor or careless drivers would not appreciably improve the total accident picture because poor drivers were rarely chronically poor but rather were, in actuality, a changing group.

The study further questioned safety campaigns designed to improve the attitudes and habits of drivers. It went on to state that since it could now be concluded that stable psychological factors played little part in the total picture, it was clear that the number, importance, accuracy, or reliability of what had passed as knowledge of human factors now needed new study.
Continuing the critique of safety knowledge, in relation to the vehicle, the study concluded that the contributions of this factor had not been well investigated. The detrimental effects of sales competition had, it was said, contributed heavily to the auto manufacturers ignoring basic safety factors. The effects of power equipment on safety (such as losing the "feel" of the road through power steering), the arrangement of controls, the need for seat belts, and inadequate rear lighting were some of the factors mentioned in this study that had not been mentioned in earlier ones. Some of the roadway features which were newly mentioned included the importance of six foot wide shoulders for all primary roads, the need to make rural main highways safe for speeds of 50 miles per hour, the dangers of certain road surfaces in regard to skidding, the need to make special provisions in regard to roadside businesses as causes of traffic turbulence, the need to develop one-way streets, to eliminate "head-in" or angle parking along city streets, and the need to carefully place, time, and forewarn drivers of stop-and-go signals. In the latter case the installation of such lights at troublesome intersections had decreased fatalities but increased other types of accidents including those involving personal injuries. 41

The 1959 study constituted a good review of developments in the years 1942-1958. While optimistic in tone, the study was marked by caution and showed reserved judgment in many areas. It marked a strong turn toward a critical review of previously accepted statements concerning the causes and prevention of traffic accidents. While it gave firm support to some judgments formed over the past years, it failed to
substantiate other widely held opinions. Steady gains on the traffic accident problem were credited to safety education, driver training, a better vehicle, improved highway engineering and enforcement, greater uniformity in traffic controls, and greater public safety consciousness.

Most significantly, the 1956 report was critical of past efforts which had sought scapegoats for the problem in a single factor, particularly the driver factor. It made the strongest appeal for federal leadership and action that had been made up to that date, pointing out the pitfalls of diffused leadership at the state level or by private organizations. It was indicated that continued gains would require exercise of national power through an agency specifically and exclusively devoted to highway safety. This agency would oversee research into accident prevention which had been urgently called for by the Hoover Conference in 1925 and by the Bureau of Public Roads in a 1936 study but whose implementation on a continuing and coordinated basis had been largely neglected.

The total field approach together with a specification of agencies primarily concerned with the various areas foreshadowed private research approaches taken in the middle and late 1960's to bring the entire problem into sharp focus. For purposes of public policy, the graphic presentation made clear that efforts at the national level were inadequate. This helped to provide an argument for creation of the Department of Transportation at the cabinet level and the top level overseer and coordinating agency, the Highway Safety Bureau, that was
established within it in the early 1960's. The Federal Driver Register called for in the report was established in 1960.

The period from 1957 through 1961 continued to reveal some improvement in the traffic accident problem. But after 1961 the disheartening plateau in the improvement of the automobile accident fatality rate set in. In fact, for the first time since year by year statistics had begun to be available in 1933, the vehicle-mile fatality rate rose for three consecutive years beginning in 1962. It must have seemed evident to knowledgable observers that new perspectives were needed. It therefore seems highly significant that three new highly critical studies appeared in the years 1964 through 1966.

The first of these to appear was a study by Haddon, Suchman and Klein entitled Accident Research: Methods and Approaches. This was a review of studies devoted to almost all types of accidents. It made a strong appeal for greater public emphasis on all types of scientific accident research by revealing the inadequacy of what was then known. In 1965 Ralph Nader published Unsafe at Any Speed. Though narrowly focused on the automobile itself as the chief culprit in the situation, it has been credited by a number of observers with being a catalyst for the comprehensive traffic safety legislation enacted by the United States Congress in 1966. In 1966 Arthur D. Little Associates published a review of the literature concerning automobile accident causes entitled The State of the Art of Traffic Safety. It was recommended to this writer by a number of persons knowledgable in the traffic safety field as the definitive modern study of the technical phases of the automobile safety.
All three of the studies stated or implied that great apathy toward accident research existed. They revealed a shocking lack of knowledge, understanding, and concern. None of the three studies considered the important advances in auto safety that had been made in the period 1946 through 1961 worthy of extended discussion and by implication indicated that further significant advances were highly problematical given the then present "state of the art" and amount of public emphasis directed towards improving it. These studies strongly implied that intensifying the preventive measures in use could not reasonably be assumed to be effective in continuing or improving the rate of reduction of the auto accident mileage death rate or the more stubbornly yielding population death rate.

Nader's study leaves much to be desired from a scholarly point of view. Its style is journalistic and it is muckraking in its approach. Though certain statements and conclusions of the work have been vigorously denied, its total effect including the criticisms directed at it were to raise significantly the visibility of the traffic accident problem. It seems undoubtedly to have added great vigor to the struggle to obtain greater legislative involvement in the traffic accident problem. Nader's attack was especially directed at the so-called traffic safety establishment. He charged that special interest groups dominated in determining the directions to be taken in combatting the traffic accident problem. Nader concluded that the automobile industry almost totally dominated traffic safety activities. He deplored, for example, the auto insurance industry's refusal to make public auto accident statistics in regard to makes and models of vehicles. Nader
leveled the same charge at Cornell University's Auto Crash Injury Research program. The Automotive Safety Foundation's approaches to safety were controlled and directed, he said, by the auto manufacturers. The Society of Automotive Engineers, the American Standards Association, the American Association of Motor Vehicle Administrators, and the National Safety Council he called the "redoubtable satellites" of the Automobile Manufacturer's Association.

In the case of the president's Committee for Traffic Safety Nader stated that this was a public agency created by government and "leased back outright to private enterprise." The Automotive Safety Foundation and the Insurance Institute for Highway Safety (IIHS), founded in 1959 by members of three insurance associations representing the majority of American automobile insurers, were said to dominate the activities of the President's Committee and to largely prevent consideration of the role of the automobile in the traffic safety movement.46

This writer has not investigated the denials of Nader's charges. The determination of whether private interests, particularly auto manufacturers, have deliberately or inadvertently avoided certain issues in safety would require extensive investigation and would perhaps be fruitless in the long run. The major social policy implication of that dispute over unbalanced approaches would seem to be that only sufficient federal government financing of public agencies can assure a truly balanced approach to traffic safety. State governments acting alone have been politically unfeasible and much less effective than could be expected of federal control. It would seem crystal clear that private interests cannot be allowed either to define or limit the
approaches to safety or to be in a position to do so. Only the far-reaching coercive powers of federal government could assure a balanced emphasis. This was the view that prevailed in Congressional actions of 1966. Various associations, some of which earlier had opposed national coercion, endorsed the federal legislation approach after it was enacted. For example, the IIHS, doubtless partly as a result of increasing criticism of the insurance industry on the safety score, has since 1966 vigorously backed federal legislative and financial leadership in highway safety.47

It is at the state level that the traffic accident problem has been largely confronted. Because of its ready availability the writer obtained information about the approach to traffic safety in Ohio.

The Ohio experience now to be considered is viewed as an illustration of what has been attempted on the state level, and how the state approach seems to have changed as a result of the recent in-depth, critical research publications and the 1966 national legislation. This experience points out many of the difficulties inherent in the traditional state-centered approach to traffic safety.
Footnotes - Chapter II


2. National Safety Council, Accident Facts (1969 ed.; Chicago: National Safety Council). The statistics and commentary from this point to p. of this study are based on tables and text commentary appearing throughout this well-indexed 96 page booklet.


6. This generalization is based on reviews of several books and articles listed in the bibliography including a 1931 review of highway safety in the Encyclopedia of Social Sciences: John J. Maher, Mind Over Matter (1937); Arthur Stevens, Highway Safety (1941); Howard DeSilva, Why We Have Auto Accidents (1942); The Eno Foundation for Highway Traffic Control (1949); a series of articles in The Annals of the American Academy of Political and Social Science (Vol. 320, November, 1953); various studies by the National Bureau of Public Roads, and Arthur D. Little, The State of the Art of Traffic Safety (1966) as well as other studies including those mentioned in footnotes above.


14. The so-called Hoover Conference of 1924 (on Street and Highway Safety) suggested that exposing all drivers to the influence of insurers would have a beneficial safety effect upon them. Financial responsibility laws were also widely referred to as safety responsibility laws. Insurance texts and treatises on safety commonly treat these laws as being enacted to promote both financial responsibility and safety.


17. DeSilva, Why We Have Auto Accidents.


20. Ibid., p. 29.


22. Howard DeSilva, Why We Have Auto Accidents, p. 52.


27 DeSilva, *Why We Have Auto Accidents*, p. 60.


30 DeSilva, *Why We Have Auto Accidents*, pp. 327-32.


33 Williams, "Formative Years," p. 21.


36 Above, pp. 24-6.
37 Department of Commerce, Federal Role (1959), pp. 7-8, 12.

38 Ibid., pp. 4-6.

39 Ibid., pp. 29-35.

40 Ibid., p. 66.

41 Ibid., pp. 54-60.

42 Above, p. 25.

43 Haddon, et al., p. 5.


47 "Operation Cover-All," a mass promotional effort by the Insurance Institute for Highway Safety launched apparently in 1968, was designed to "sell" the national legislation of 1966.
CHAPTER III

OHIO EXPERIENCE AS AN ILLUSTRATION:
PARTICULAR ASPECTS OF AUTOMOBILE
SAFETY EFFORTS VIEWED FROM
THE STATE LEVEL

Though information about the traffic accident problem in Ohio is scattered and limited, enough information was available to arrive at some tentative conclusions. For example, it seemed quite probable from the documentary evidence and from interviews with Mr. A. R. Schwartz, the veteran state public information and research director, that the federal legislation of 1966 should bring important if not revolutionary changes in Ohio's activity in regard to highway safety. There was no evidence that the massive attack on the traffic accident problem indicated as forthcoming from the federal legislation had ever existed in Ohio. Ohio, as was true of almost all if not all states, had been quite lax in applying the best available knowledge in pursuit of its avowed approach of education, engineering, and enforcement. The author has located little evidence of research done or sponsored through Ohio state highway programs, other than the gathering, compilation, and the issuance of reports on statistics provided from police accident reports and a few engineering studies. Research studies of some phases of safety was undertaken in certain cities and, of course, national studies, both public and private, such as those of the National Safety
Council and the Bureau of Public Roads (and later the National Highway Safety Bureau) were available to Ohio officials. However, the efficacy of both research and the implementation of what was considered the best available knowledge, left much to be desired.

Ohio's official highway safety program was for most of the period of this study centered in a state highway department. A governmental reorganization in 1953 created a separate Department of Highway Safety. Its stated purposes were to promote traffic safety control on the highway, to enforce motor vehicle registration and licensing laws, and to encourage research and education programs to reduce losses caused by accidents on Ohio's highways. The Highway Safety Department in 1968 supervised the State Highway Patrol (enforcement, education, vehicle inspections, and license examinations), the Bureau of Motor Vehicles (license plates, point system law, registrations, titles, and administration of the safety responsibility or so-called semi-compulsory insurance law), a Research and Services Division (primarily safety literature and safety new distribution), Field Safety Services (inspiration, guidance, leadership of local safety groups), a Statistical Division (defines critical areas), a film library (provides safety films to the public), and an exhibit workshop (for fairs and conference displays).\(^1\)

An evaluation of highway safety in Ohio was published by the Ohio Legislative Service Commission in 1967.\(^2\) This carefully prepared ninety-three page study presented a digest of the national scene and compared Ohio to the rest of the nation in all important phases of highway safety. A major purpose of the study seemed to be to acquaint Ohio
legislators with the requirements of the National Traffic Safety Act and the Highway Safety Act enacted by the United States Congress in 1966. The study listed thirteen areas of Ohio highway safety programs that seemed likely to require expansion or improvement in order to meet the demands of the federal programs. The study cited dozens of highway safety studies indicating those areas where Ohio needed improvement. As would certainly be expected, many areas were indicated which required much research on a national and possible on an individualized state basis.

A number of important needs were shown to exist in relation to both finding new knowledge and applying what was already known. For example, available statistics could not be easily translated into an accurate picture of Ohio's highway safety problem. At one point the report stated, "Traffic accident data collected and processed in Ohio are of limited use in evaluating the efficacy of the state's traffic safety problem. Those data which are collected and processed are incomplete, frequently imprecise, and only indirectly related to scientific analysis." This echoed statements made in regard to the national situation, as noted earlier.

The report noted that Ohio began to collect and publish statewide statistics in 1936, the year in which the first driver's license law in Ohio became effective. The source for statistics in regard to death, injury, and property damage are reports filed by police agencies. Shortcomings in regard to post-accident investigations were, as on the national scene, very evident. The highway patrol, county sheriff's departments, and village marshalls reported accidents coming within
their jurisdictions. Cities (over 5,000 population), however, were required to report only fatal accidents, while village reports were often incomplete, since no one checked the work of the marshalls. The state had no compulsory reporting law applying to individual drivers or owners before 1953. After March 1, 1953 drivers involved in accidents in which a personal injury occurred or in which property damage exceeded $100 for any one vehicle were required to file a report with the state Bureau of Motor Vehicles. There was, however, no close correlation between these driver reports and police reports, and there was little improvement in the quality of information available for determining contributory causes in accidents.

The 1967 Legislative Service Commission report noted that highway patrolmen received adequate training and supervision in accident investigation reporting but that local police often did not. This statement reflects a much lower standard of investigation than that indicated as desirable by national traffic safety experts.

Much of the traffic accident problem was beyond the bounds of what could be reasonably accomplished by state actions. Variations in rules of the road between Ohio and neighboring states indicated that even regional interstate cooperation was not being achieved. The discussions of the Hoover Commission Report of 1925, as will be recalled, had pointed out the imperative need for nationally uniform signs, signals, and rules of the road. But in 1968, Ohioans and others traveling interstate faced the situation so well described by Senator Abraham Ribicoff of Connecticut in 1965. The Senator noted that of nine items in the Uniform Vehicle Code (established in 1925 and updated
periodically by a highway bureau in the Commerce Department) no state had enacted all. For example, painted lines on the highway, existing in most states but not in all, were often of varying colors and meant differing things from state to state. Signs and signals were not uniform, "U" turns were permitted in some states and not in others, pedestrian crossing rules varied, and driver licensing laws varied enormously from state to state. Senator Ribicoff indicated that the best estimates stated that thousands of deaths and tens of thousands of serious injuries annually were attributable to the lack of uniformity in these rules of the road.

A factor contributing to traffic accidents that was largely beyond the reasonable control of state or local officials was the relative safety of the automobile itself. As noted earlier in this study a number of writers on the traffic accident problem beginning in the 1930's had copiously commented on the engineering faults of the vehicle in relation to prevention of accidents and of serious injury once an accident occurred. It was, however, inconceivable that a state or even a few states acting as a unit would take it upon themselves to require that automobiles entering their jurisdictions meet rigid safety standards that were not required elsewhere.

In the area of basic research Ohio and other states could have cooperated in making additional studies and in sharing their results. Haddon, Suchman, and Klien's *Accident Research* commented that accident prevention and accident injury prevention measures rarely took cognizance of the stark truth that the causes of most accidents were in reality a mystery. Ohio citizens, beginning in 1936 and increasing in
tempo after the first state highway safety conference of 1957, were made quite aware of the state's attention to highway safety. But the lack of research on basic causes was rarely mentioned in these awareness campaigns. Safety programs in the schools, state and community organization sponsored films and speakers, fair displays, and radio and television messages bombarded the public and, ironically, created greater public apathy. Doubtless the public received the image that much, perhaps everything reasonably possible, was being done when in fact this was far from the case. Campaigns were usually couched in such terms as to indicate that those presenting the promotions knew all the answers. Rarely, if ever, was the true plight that "we really don't know what causes auto accidents" presented to the public. The public's righteous anger over the highway slaughter was vented largely against unskilled, careless, or reckless driving which continued to bear the brunt of the attack.6

Indeed a major problem seems to have been that so much activity was being carried that safety campaigns may have "not only become a bore but a menace."7 The public as a whole seemed to content itself with the comforting, but false, assurance that education and adequate legal restrictions properly enforced against chronically errant drivers were the simple solutions that were required. Education campaigns largely ignored the idea that almost all drivers felt that these messages were directed toward someone else. Enforcement campaigns ignored the fact that those involved in most accidents were not chronically reckless or incompetent but were "average" drivers.
Accident statistics poured forth from the state capitol indicating such items as number of deaths and injuries in rural as compared to urban locations, the driving action each driver was involved in at the time of an accident (going straight ahead, turning left, etc.) and the relative position of cars to each other and to the roadway at the time of collision (angle collisions, ran-off-road, cars going opposing directions, colliding with a pedestrian, etc.). The latter groups were tabulated in terms of percentages of all accidents on rural state highways and in relation to all fatal accidents. Statistics also compared total death and auto registration statistics year by year for all years following 1936. In some years sets of tables compared Ohio with other states having the highest traffic death totals for the current years as to population and mileage death rates. Obviously such statistics could give only broad hints as to the contributing factors in accident causes. They gave a very imprecise indication of Ohio's traffic accident problem in relation to other states since they did not consider terrain, traffic density, purpose of travel, enforcement and many other factors. Management of the problem demanded much more.

Comparing reports from the late 1930's, 1940's, and 1960's, one finds little difference in the types of information presented. The reports of the 1930's considered road characteristics in some greater detail. For example, curves, grades, bridges, and narrow roadways were assigned percentages as a part of the general locations of accidents. Pedestrian actions were broken down into eight categories in the reports in the 1930's. Reports in the 1930's included editorial comments as to what was responsible for the mishaps, for example, the 1937
report stated, "Apparently, motorists create their own hazards as evidenced by the large number of accidents on open highways. Too great a speed or improper driving was probably responsible for a large part of such mishaps." At another point the 1937 report noted that while only 32 per cent of vehicular movement occurred at night 57 per cent of the fatal accidents occurred during the hours of darkness. The report speculated that fatigue, drowsiness, and alcohol use were greater factors at night. The writer of the 1937 report also took note of the lack of a complete system of reporting the factors involved in accidents and called for more careful and complete reporting.

An interesting commentary relating to highway conditions is found in the 1947 report, which attempted to relate accidents on rural state highways to road sections and thus to determine "accident prone mileage." Twenty-nine per cent of the accidents occurred on 4 per cent of the total state system and this 4 per cent accounted for only 15 per cent of the total estimated mileage traveled in the state. Yet a critical analysis of available data made by the Transportation Engineering Center at The Ohio State University (1970) indicated that designated sections were too small, accident experience too scattered, and accident reporting too incomplete to present reliable design and operational information. The OSU report also noted a fact that other studies had reported, namely, that corrections of spot hazards often led new contributing factors to arise, e.g., eliminating a curve encouraged higher average speeds on the roadway causing accident levels to rise at a curve or intersection a few hundred yards or perhaps a few miles further away.
It is beyond the scope of this study to examine in detail all of Ohio's highway safety activities in relation to national research findings and the 1966 federal legislation. The author has chosen two areas, which indicate the complexity and tenacity of the traffic accident problem, for some extended comment. These are the problem of the driving an automobile immediately after the consumption of alcohol and the problem of proper training and education of the beginning driver and remedial training for drivers frequently involved in accident and traffic violations. Both of these areas received extensive treatment in the 1964 Haddon, Suchman, and Klein study Accident Research and in the 1966 Little study The State of the Art of Traffic Safety. Both areas were included in the demands made upon the states in the 1966 National Highway Safety Program Standards. Each area will be examined from the point of view of available research knowledge and state activity. Following this the pertinent sections of the 1966 legislation will be examined and evaluated.

Considerable attention was devoted to the drinking driver in Europe and the United States in the early years covered by this study. However, it was not until 1959 that William Haddon, Jr. and Victoria Bradess published the first really satisfactory scientific study showing the high incidence of drinking drivers involved in fatal one car accidents. Since the late 1950's numerous other studies have appeared which focus on drinking drivers as a causative factor in death and injury accidents. By the late 1960's, it was generally conceded that alcohol was involved in about one-half of all the fatal accidents in the United States.
Doubtless many who were concerned about the traffic accident problem in the early years of this study felt that the use of alcohol was an important causal factor in accidents. Insurance journals for example in the early 1930's revealed a concern that the auto accident rate might rise with the end of the prohibition era. But it seemed to be the dominant feeling until the late 1950's that only a relatively minor fraction of auto accidents were caused by over-imbibing. Studies published by the National Safety Council in the 1930's did discuss the measurement of the effects of alcohol on the performance of such tasks as driving and the ways of scientifically measuring the amount of alcohol that had been consumed in relation to its impairment of a subject driver. However, as Haddon and Braddess noted in the above mentioned 1959 study, such findings did not provide a stimulus to action. Those authors quoted a 1934 study which stated "that the problem of controlling the drinking driver and the pedestrian is far from being solved may be due, in part, to the fact that no accurate statistics are available regarding the relationship of alcohol to automobile accidents."11 Studies reported in 1938 and included in DeSilva's, Why We Have Automobile Accidents (1942) reported that the use of alcohol was involved in 47 per cent of all auto accidents. These studies apparently were quite slow to influence state law-makers and administrative officials.

Ohio seems to have been particularly reluctant to take official cognizance of the relation of alcohol use to highway accidents. This writer reviewed Ohio highway safety reports for 1936, 1947, and for a number of years of the 1960's to determine Ohio's approach to alcohol
and driving research and control. The 1936 "Ohio Traffic Accident
Facts" reported the amazing statistic that only 6 per cent of drivers
involved in fatal accidents were intoxicated. The 1947 report did not
give a comparative statistic on alcohol use and fatal accidents. That
report did, however, give some indication of the need for enforcement
emphasis. Without defining the term "drinking driver," the 1947 re­
port indicated that there was a correlation of drinking driver accidents
with days of the week and time periods within these days. Weekdays
6 A.M. to 6 P.M. accidents involved less than 10 per cent drinking
drivers, but Saturdays 9 P.M. to 12 midnight accidents involved 60 per
cent drinking drivers, while the midnight to 3 A.M. period on Sundays
accidents involved 56 per cent in the "had been drinking" category.

The Ohio Department of Highway Safety reports for 1962, 1963, and
1964 indicated that from 18 per cent to 20 per cent of drivers involved
in accidents on Ohio's rural highways had been drinking. A check of the
1968 Ohio Accident Facts revealed the statement that 40 per cent of the
fatalities listed in rural state highway accident reports involved
drinking. A further breakdown of the year 1962 revealed that 17.2 per
cent of all accidents and 26.3 per cent of all fatal accidents involved
a driver who had been drinking. Only 9.5 per cent of all accidents
involved a driver whose judgment, according to the estimation of the
investigating officer, had been impaired by alcohol. In contrast, a
1962 California study of 648 fatally injured drivers revealed that 54
per cent had been drinking sufficiently to be impaired, while a Colum­
bus, Ohio study in 1960 revealed that 56 per cent of fatally injured
drivers had been drinking. Other numerous special studies have
revealed that nearly 50 per cent of fatal accidents involve a drinking driver. The various studies of randomly selected drivers not involved in accidents revealed that from only 10 to 15 per cent of the driving population had measurable amounts of alcohol in the bloodstream at any given time. This latter use of control groups indicated that the use of alcohol was positively associated with the occurrence of accidents. It seemed to indicate that the drinking driver on the average was about four times as likely to be involved in an accident as the non-drinking driver. But the Ohio statistics, in general, seemed to far under-estimate the problem.

The reasons why state accident reports failed to agree with the closely controlled studies are not fully known. However, much of the difference may well be accounted for in the fact that before 1968 no compulsory test for the presence of alcohol existed in Ohio. Official Ohio statistics were based on the subjective judgments of investigating police officers. Many drinking drivers involved in accidents have therefore doubtless escaped detection. The great majority of states during the period of this study adopted chemical test laws to determine the alcohol level in the blood. Associated with these laws were prima facie evidence laws to the effect that at or above a certain alcohol level present in the bloodstream the driver would be considered as "driving under the influence." Some states recognized a concentration of .15 per cent as presumptive evidence of intoxication but the trend was to reduce this level to .10 per cent. Further a number of states have during the 1960's adopted "implied consent" laws under which a driver was deemed to have consented, when receiving a driver's license,
to take a chemical test whenever it appeared to a police officer that a driver may have been drinking. That this action was not taken in Ohio doubtless deterred officers from making arrests for suspected driving "while under the influence."\textsuperscript{13}

In Ohio before 1968 a chemical test had been acceptable as evidence only upon testimony in every case of an expert as to the meaning of the result of the test. Police and prosecutors lacked both the "presumptive level" law and the "implied consent" law. Evidence rules in regard to alcohol as well as public sympathy for defendants made it difficult to obtain convictions for "driving while under the influence." Officers may well have ignored suspicions of alcohol because of the unlikelihood of conviction. Ohio's mandatory three-day jail sentence for conviction of driving while under the influence has therefore been something of a "paper tiger."\textsuperscript{14}

All of the above discussion assumes, of course, that convictions and resulting penalties for "driving while under the influence" would be effective deterrents to such activity and would therefore be useful safety measures. Studies quoted in Accident Research and The State of the Art of Traffic Safety show the need for great caution in assuming that detection and enforcement will yield commonly expected results. As with so many traffic safety measures, the effectiveness of alert detection and stringent enforcement procedures is not at all certain. Carefully controlled and difficult to perform studies will be required to produce evidence as to such effectiveness. Law professors point out that laws cannot be very far ahead of voluntarily accepted customs. There is much evidence to suggest that the public does not seem to
regard traffic violations as serious crimes. It has been pointed out in regard to traffic law violations that a lack of congruence has existed between these laws and currently accepted mores. The contention is that the appearance of new technology in a society often demands adjustments in behavior patterns that do not immediately occur, in fact, the required behavior changes may require generations to be accomplished.\footnote{15}

Contemplation of the problem of controlling abusive use of alcohol has raised other questions concerning possible irreducible, inherent problems of anti-social behavior. Some have argued that traffic deaths and injuries fulfill a desire for a blood sacrifice much as did the deaths of gladiators or wild animals in combat in the Roman stadiums. They have raised the question as to whether the traffic accident problem can be solved or reduced to tolerable levels by direct and rational means. They suggest that "driving while under the influence," speeding, and recklessness and even inattentiveness are often evidence of problems with roots involving personal, psychological adjustments.\footnote{16} They intimate that an agreeable level of traffic safety will be achieved only by making the total life experience more satisfying, e.g., violence can perhaps be channeled into sports or other activities in which aggressive feelings can be vented without inflicting intolerable harm upon the participants or spectators.

Accident research people acknowledge the possibility that the direct and rational approaches may be limited in effectiveness. However, they suggest that research and action must continue along
rational lines but also that questions related to the broader view of society and human behavior patterns must also be studied.

The other area which has been chosen to illuminate the status of traffic safety research and the complexities of determining the most efficient courses of action is the area of driver training or education. Even the choice of the term "training" or "education" is in dispute. One school of thought holds that the teaching of driving should involve only the mechanical skills and the judgments required on the highway, thus "training" is considered the proper term. Another school maintains that correct social attitudes must be taught as well as skills and that the term driver "education" is therefore more appropriate. It seems to this writer that the teaching of skills only is an approach far too narrow to meet the complex demands of highway safety. In view of the fact that safety experts have long held that "a man drives as he lives," it would seem that the education approach is the more sound of the two. For that reason the term driver education will be used here.

Because the fatality and injury rates are so high among young people in about the age range 18 to 25 years and because it is at this group that high school driver education is directed and seems to have the greatest effects, the following comments will be directed primarily to the high school driver education program. The first driver education course was offered in 1932 at the high school level. Following a slow early growth, by 1947 the program had been endorsed by the American Association of School Administrators and 330,000 students were enrolled.
The literature indicates that during these early years those who evaluated driver education programs were largely uncritical of them. Many held out great hopes for such programs and they gradually became an important part of the curriculum in most high schools. Though still enrolling less than half of the new drivers, driver education was being taught to 1,500,000 young people by 1963. Studies had shown that accident rates for driver education graduates were only about one-half that for non-graduates. At about this time, however, studies began appearing questioning the value of the courses on the grounds that those who elected to take them possessed special attitudes and capabilities—or perhaps drove fewer miles—all of which would have permitted them to maintain better driving records without the course. Therefore, the statistics purporting to show values of the course by a comparison only on accident records between participants and non-participants were of questionable validity. Driver education also came under fire in the early 1960's because it has rarely taught the handling of emergency situations, for example, those resulting from sudden skids. These criticisms appeared prominently in the Haddon, Suchman, and Klein study of 1964 and the Arthur D. Little study of 1966. The conclusions appearing there did not condemn driver education but called for controlled studies of its efficacy as a safety measure. For example, the Little study said that "the effectiveness of driver education and training programs is poorly understood"; large scale controlled studies were recommended.

Writers in the Haddon, Suchman and Klein study admitted the need for achieving measurements that would adjust for psychological,
sociological and mileage and type of driving factors in measuring the success of driver education. But they contended that driver education was beneficial because of the control it could provide as well as the potential attitude development. These writers also pointed out the difficulties of achieving favorable attitudes. Their statements indicated that measuring personal adjustment to the whole society may be the most relevant line of approach. The editors comment on one study of youth and the automobile as follows:

In an interesting analysis of the behavior and cultural implications of these findings, the authors (Ross A. McFarland and Roland C. Moore) analyze such phenomena as the "hot-rodder" and discuss some of the social and psychological needs served by the automobile. The automobile is a symbol of economic and social worth; it provides a vicarious sense of power; it represents freedom and escape from parental authority; in many areas it is an essential feature in dating and courtship. For many young people it provides an outlet for hostility, discourtesy, emotional conflict, and revolt. All of these factors may combine to make the automobile for some a weapon rather than a convenience, and unsafe, rather than safe, driving habits the more satisfying way to operate a car.19

In reviewing driver education for the Ohio legislature in 1967, the Ohio Legislative Service Commission noted that "Most authorities agree that driver education courses do improve the driving records of youthful drivers." But at the same time the writers noted that the impact of the programs had not been defined nor had the most effective structure been fixed. They took note of the fact that trained drivers had fewer accidents but also pointed out that after the first five years no difference in the accident record of trained and untrained drivers existed. Also noted was that the self-selection of driver education enrollees made "measurement of the impact of driver
instruction on traffic safety tenuous if not impossible." Ohio was compared in this study to all other states as to the per cent of eligible students enrolled in the driver education and as to the per cent of schools offering a minimum standard course. With only 37 per cent of eligible students enrolled in 1965 Ohio ranked thirty-second among all the states; in "schools offering," Ohio had 80 per cent and ranked seventeenth in the nation.

Perhaps most significantly the Ohio Legislative Commission report stated that, according to the 1966 national Highway Safety Act, penalties would be exacted of those states not initiating a "comprehensive" driver education program. Presumably states such as Alabama and Rhode Island in which only 4 per cent of all eligible students were enrolled in driver education would be affected more than Ohio, but it could be expected that Ohio would be required to move toward the 100 per cent enrollment of eligibles found in Michigan and North Carolina. 20

It was clear in the research studies that almost the entire field of traffic safety was greatly unsettled and ill-explored. The requirements made by the national Highway Safety of 1966 as amended in 1968, however, required the states to move ahead with programs in sixteen areas including vehicle inspection, traffic controls, laws, and courts, traffic records, emergency medical services, and others including driver education and the alcohol problem. The Haddon et al., and Little, Inc. research studies mentioned above cautioned that accident research abounded in suppositions, but that any action at all would require a kind of intuitive leap. These research studies pointed out that given limited resources which could be applied to highway safety
measures cost effectiveness studies were needed. Keeping that point in mind, it seems significant that in every appropriate case the sixteen point federal program required an effectiveness evaluation of the program by the state governments. Researchers recommended special projects be initiated on alcohol and driver education recognizing that the term "cause" in relation to traffic accidents had little operational significance; the comprehensive, balanced federal approach complemented that research philosophy. The federal law requirements too were consistent with the research statement that "it is not possible to identify factors whose removal or control will reduce accidents by a specific amount." The federal approach also assured that the "matching of remedial efforts with the incidence of contribution" to accident causes would not be a limiting factor.21

The research findings and the leadership being asserted by the federal government made it clear also that if the letter and spirit of the new federal laws are followed, states would no longer be left to their own dismally failing devices. Research findings and the federal legislation gave recognition to the national approaches needed. Among the federally assumed responsibilities were, in an accompanying piece of legislation, important vehicle standards including not only equipment but also design features which the states had studiously avoided. The national driver register established in 1960 would now permit access by the states to the past records of millions of drivers. A federal agency would now collect, coordinate, and disseminate the results of the sixteen feature programs which the states would administer and evaluate. Federal research through new traffic safety research centers
was to be carried out and the efforts of private and other public re-
search was to be coordinated through the Highway Safety Bureau in the
new presidential cabinet level post, the Department of Transportation.
As an example, one series of experiments on the building and testing of
proto-type safety automobiles involving several millions of dollars was
begun through the Department of Transportation by the summer of 1970.

Yet this review of safety efforts cannot end on a note of unmixed
optimism. Ohio and other states in analyzing their programs after the
passage of the landmark federal legislation of 1966 found enormous gaps
to be filled if federal standards were to be met. It was obvious that
billions of dollars annually would be required to meet the ambitious
new standards. It was equally obvious that no such level of funds
would be appropriated. As Senator Walter Mondale was quoted as saying
in 1969, "We keep authorizing dreams and appropriating peanuts."22
Some inkling of the money required to finance truly effective improve-
ments can be seen in the funds required in two states to improve road
signs. Tennessee in recent years has spent two and one-half million
dollars in removing, re-positioning, replacing, or installing new road
signs. A study in Iowa revealed a need to spend five million dollars
for similar purposes. This was a small part of only one of the sixteen
federally authorized programs.23

Of course, it was expected that states would tax themselves to
provide the great majority of the action and research required in the
new federal highway safety legislation. The national authorization of
only $267 million for implementation of the programs over a three year
time span was made on the basis that states would largely foot the
bill. But even the meagre amount authorized was not appropriated. Only $92 million of the total $246 authorized by the fall of 1969 had been appropriated. 24 Judging from the reaction encountered in the Ohio Department of Highway Safety, it was obvious that Ohio was waiting for federal money before beginning the bold innovations indicated as needed by its 1967 review. Ohio's public information officer indicated in the summer of 1970 that so far as he knew, neither Ohio nor any other state was faced with any real threat from the penalty provision of the 1966 legislation. By the terms of that legislation after January 1, 1969 federal aid highway funds were to be reduced by 10 per cent "to any state which is not implementing a highway safety program" approved by the Secretary of Transportation. Obviously "implementing" was a broad word and in the approval of programs there was much leeway for the exercise of judgment by the Secretary or his designee.

Those interested in further significant progress in highway safety were forced to observe a national Congress which talked big on goals but was penny pinching on means. Its "big talk" had led the states to expect financial as well as inspirational leadership. With Howard Pyle, President of the National Safety Council, many were forced to "the nagging impression that perhaps the Congress is not really serious about traffic safety at all." 25

To a large extent insurers have been looked upon by the general public and by government officials as the natural leaders in the fight against the traffic accident problem. The failure to move steadily forward in reducing traffic injuries, or someone or something else has contributed heavily to insurer problems. How and why is the principal
subject in the following chapter. In its concluding section the fol­lowing chapter will also offer some over-all evaluation of the total approach to traffic safety throughout the period of this study.
Footnotes - Chapter III

1. The above discussion is based on interviews with A. R. Schwartz, Public Information Officer of the Ohio Department of Highway Safety during June and October, 1970. Miscellaneous materials gathered by Mr. Schwartz in connection with reports to be submitted to the Governor were used for the statements about organizations and purposes of the Department.


8. The writer reviewed most all of the reports for the years 1936-1968 in the state documents depository in the Ohio State Library, Front Street, Columbus, Ohio.


11Ibid., p. 216.


13Ibid., pp. 53-4.

14Ibid., pp. 55-6.

15Ibid., pp. 53-4.


17Ibid., pp. 55-6.

18Ibid., pp. 53-4.

19Ibid., pp. 55-6.

20Ibid., pp. 55-6.

21Ibid., pp. 55-6.

22Ibid., pp. 55-6.


25 Ibid.
The mutual relationships of the traffic accident problem and the traffic safety movement to automobile bodily injury liability insurance are extensive. This insurance coverage came into existence because auto accidents do occur and because the laws make negligent automobile drivers or owners financially responsible for their consequences. Because this is so, traffic accidents and the public's attitude toward them determine the size and scope of auto liability insurance. Insurance policy coverage, its price, the selection and retention of business, and the claims services which the business rendered were vitally affected by the public's treatment of the traffic accident problem. The history of liability insurance's development and its social functions can therefore be much better understood in the context of the auto accident problem and the measures taken to alleviate it.

It may be said at the outset that a major argument for retention of the fault or negligence system upon which liability insurance is based is its supposed safety benefits. Originating long before the appearance of liability insurance, the principle that one who caused an injury should bear its costs doubtless had beneficial effects as a deterrent to careless or reckless activities. But as liability insurance became almost universally owned by automobile operators, it was
evident that not the wrongdoer, but all the policyholders of the company shared in paying the costs of careless or reckless actions. Its effects on safety became highly questionable, but the system was retained.

As society increasingly realized that fault could not be clearly and singly fixed in many accidents, but yet sought to allow compensation to accident victims, the fault law and the liability insurance system were increasingly abandoned in practice in favor of a less harsh system. Nonetheless society continued to expend hundreds of millions and in later years billions of dollars in maintaining this out-worn system. Because of the safety promotional arguments advanced for the system by government and the insurers and others, the public doubtless felt that it was worthy of retention.

It was in this framework that society sought means to increase the ownership of bodily injury liability insurance. In the late 1920's and continuing into the 1930's governmental officials and others interested in traffic safety looked forward to important gains on the traffic accident problem through increasing the ownership of liability insurance. A strong desire was manifested to subject all drivers to the scrutiny of automobile insurance underwriters. The worst drivers would be screened out and would be strongly discouraged from driving until they mended their ways. Those insured would have their cars inspected for safety faults and would be subjected to at least the certain amount of safety education that accompanied the desire to retain insurance and the insurers efforts to keep their claims costs low.¹
So strong was the desire of state legislators to see to it that the safety "education" of insurance would be extended to all and that each victim of an auto accident had a solvent defendant to whom he could turn, that compulsory auto liability insurance was considered in every state in the middle and late 1920's. As insurers observed the ill effects of the one compulsory insurance law enacted that of Massachusetts in 1927, they almost universally turned against its further extension. Insurers and others opposed to compulsory insurance managed to substitute financial responsibility laws which, despite the rather strongly coercive features designed to "encourage" the ownership of auto liability insurance that were found in them, retained much greater freedom of action for the insurers.

It can be seen, then, that society expected much of insurers in regard to the traffic safety problem. Insurers had been credited with significant safety advances in industrial injury accidents and in fire prevention through inspections and the encouragement of safer practices, and there seemed reason to believe that this success could be applied to automobile accidents. This chapter will show some of the side-effects of this role assigned to insurers by the public. It will also consider some of the ways in which insurers themselves tried to protect and defend their interests through activities designed to promote safety.

Society's total efforts in traffic safety characteristically were spasmodic, episodical, and not very effective. Because of this, insurers eventually felt themselves forced into expending considerable time and energy in safety activities. The alternative was to be faced
with significantly greater governmental encroachment in their tradi-
tional field of operation. This chapter offers illustrations of the
relationship between safety efforts and insurers, and the safety ac-
tivities of the insurers themselves, but it is not designed as a com-
prehensive survey of those relationships. The chief effort is to pre-
sent evidence, sufficient to support the conviction that society's his-
torical failures to satisfy the demands for a more effective traffic
safety program have gone far in creating and worsening the automobile
insurance problem.

Society's failures to take strong and direct action on the traf-
ffic accident problem led to a mis-application of the existing institu-
tion of insurance. An outdated "fault" law was retained ostensibly for
its safety benefits but insurers were required to compensate for its
existence by providing accident insurance (insurance which paid claims
without regard to fault) when their operations were geared to liability
insurance (requiring payment only when fault was evident on the part of
the insured). The resulting complications in many cases diverted in-
surers from their basic purpose of pooling and shifting loss costs. In
self-defense against fumbling state measures, insurers were required to
take a leading role in traffic safety. They were, however, ill-
equipped for this public leadership since their claims investigations
were by the requirements of the fault law system centered on a deter-
mination of who had caused the accident rather than upon the whole
panorama of causes. Of course, insurers did not possess coercive
powers in regard to safety matters. They could exert pressure on gov-
ernment to act, but their sphere of action and influence was limited.
While insurers can suggest safety activities for government action they cannot effect their implementation. Insurers ideally should be almost totally concerned with making possible the pooling and sharing of irreducible risks.

The record of the traffic accident problem and insurers, as shown by the above discussion, reveals that insurers faced a threat by the middle and late 1920's of strong government controls over the industry flowing from the introduction of compulsory insurance. They were able to forestall those controls by moving towards financial responsibility laws in preference to compulsory insurance. Through changes in the insurance policies, the introduction of new coverages, the development of a pool to provide insurance for the normally unacceptable and some attention to problems of highway safety, insurers were generally able to prosper until the 1950's.

By the middle to late 1950's a number of converging pressures beset the industry. Both individual joint efforts of the insurers were made to avoid new threats of governmental encroachment. Finally in the mid-1960's criticisms of insurers, the traffic safety establishment, and the negligence system reached an all-time high. The federal government moved strongly in highway safety legislation in 1966 and the insurers seemed for the first time to move in a strongly positive way to attack not only the traffic accident problem, but the fault system itself. By 1970 a guarded optimism in regard to the insurer's underlying problems, the traffic accident and fault system dilemmas, was possible.
Historical information on the activities of insurers in the earlier years of this study in regard to highway safety is lacking. Apparently insurers shared much of the prevailing viewpoints of the period. Insurers were quite aware by the mid-1920's that improvements in the traffic accident problem would result in growing profits for insurers. Rates were always figured on past experience and other things being equal a reduced accident experience in a current year would produce greater profits than anticipated. Insurers took part in the National Street and Highway Safety Conferences of 1924 to 1934 as previously noted, seemingly endorsing the role assigned in which they were to identify "reckless, incompetent, and drunken drivers" so that they could be removed from the highways. Insurance journals, too, were replete with articles in the late 1920's and early 1930's urging financial responsibility laws designed to increase highway safety through the beneficial influence of more widespread ownership of liability insurance.

To the chagrin of government officials and insurers alike the early financial responsibility laws were not effective in greatly increasing the number of auto owners purchasing liability insurance. Estimates of the percentage of auto owners so insured remained below 40 per cent until after 1940, having been estimated at about 25 per cent in the late 1920's and at about 33 per cent in 1935.\(^3\) Despite the lack of evidence that safety was being aided by these measures state governments beginning with New Hampshire in 1938 greatly strengthened the financial responsibility laws. Under the new laws the percentage of liability insured autos generally rose to over 80 per
cent as the states adopted the stronger measures. Most states enacted stronger laws during the late 1940's and early 1950's but neither these laws nor other safety activities made sufficient headway on the traffic accident problem to satisfy social demands.

A completely satisfactory analysis of the level of efforts made by insurers in regard to highway safety could not be determined from the sources examined in this study. Inquiries made to the Ohio Insurance Information Institute, the Insurance Institute for Highway Safety, the Ohio Department of Highway Safety, and to a number of leading insurers as well as a review of the literature listed in the bibliography (especially of leading insurance texts published since 1925), however, reveal something of the pattern of concern with the number and consequences of accidents. Insurer literature was rarely self-critical. It often made reference to the poor public support and the low level of safety measures undertaken by government officials and it was evident that insurers expected leadership to come from government, especially state government. Insurance officials generally remarked in regard to inquiries about safety and other past activities to the effect of one letter which stated, "we have been too busy with current problems to think much about our past."

An attempt has been made in reviewing the limited information available to reach some tentative conclusions about the activities of insurers. It would perhaps be feasible to study one company or perhaps one trade association over a limited number of years through insurer records and legislative and newspaper files to determine with some exactness the work of one representative company or association in this
field. Insurance journals, texts, and other secondary sources mentioned in the footnotes and bibliography and some rather recent primary sources including insurer "in-house" publications and pamphlets for public distribution are the bases for the tentative conclusions stated here.

Prior to the late 1950's there was little evidence that insurers were massively concerned about the traffic safety problem. True, they had exhibited strong interest in securing passage of the financial responsibility laws with the anticipated safety gains given as a substantial rationale. But safety gains, it would be argued, could well be even greater with compulsory liability insurance which the insurers virulently opposed. Insurers made no secret of the fact that financial responsibility laws would be important as a way of avoiding the state controls which they felt were sure to follow compulsory insurance laws. Once the financial responsibility laws were universal, insurers were not prominent among the leaders of the traffic safety movement until a convergence of several problems seemed to demand it in the late 1950's.

Insurers did continually promote safety but the evidence indicates that theirs was a somewhat laconic support unless the industry was threatened by stricter controls or by the anticipation of the creation of state-operated insurance funds. Insurance journals and early texts indicate that insurance companies urged safety attitudes, gave safe-driving tips, and sponsored a number of scholarships and fellowships for the study of auto accidents as early as the late 1920's. Insurance personnel were active in community safety groups, frequently filling the speaker's rostrums. Insurers contributed substantially to
the National Safety Council which urged greater attention to the traffic accident problem. It would seem nearly impossible to arrive at the total of insurer expenditures for safety in the early years of this study. Estimates of recent years have placed the figure at about fifty million dollars annually, only about 1 per cent of the premium income for liability insurance coverage. Support in earlier years seems to have been much less. This would not include the value of time and efforts by local agents and claimsmen in public contact work and in work with individual clients, and it would not include the work of underwriters in analyzing loss records of insureds and making suggestions to these individuals for the avoidance of future accidents. It seems clear that the level of expenditure greatly increased after the late 1950's. Whatever the amount devoted to that cause it would doubtless fall far short of what some critics have suggested that insurers should spend. Noting the high expenditures for safety in workmen's compensation insurance (in connection with fire and boiler insurance), one safety expert suggested that auto insurers should spend 8 to 10 per cent rather than 1 per cent or less of their premium income for safety measures.4

Insurers were rarely directly outspoken in attempts to obtain political action on the traffic accident problem until quite recent years. Until the late 1950's insurers preferred to play the role of urging others to demand governmental action. There was, for example, little record found of direct lobbying until very recent years. Journal articles and speeches urged groups interested in the traffic accident problem to seek governmental action on highway standards,
stricter driver licensing laws, driver education courses, and uniform traffic laws with strict enforcement. But they did not seek to provide leadership for continuous activity or pressure on legislators for achievement of these objectives.

The evidence is somewhat meagre that basic traffic safety measures were of important interest to insurers before the 1950's. Their earlier activities did reveal an interest in driver testing and licensing and in the development of state-maintained traffic records for individual drivers. Insurers found that such programs developed information that helped their underwriters to avoid undesirable risks. One such interest was that involved in psychological tests for drivers thought to be accident-prone.

One insurance journalist for example in 1926 wrote that the automobile was not over-hazardous, that 22,000 traffic deaths was not "too bad" considering the total population and the number of vehicles in use but did express concern over certain types of drivers. While citing no statistics to back his judgment he said "It is a small number of drivers who are responsible for a large number of accidents." On this basis, he called for a "fair, accurate, standardized" driver examination after the first accident since administering such an examination to all licensees would be prohibitively expensive. The examination in question was stated to have been tested and proved effective by a certain Dr. Walter Bigham. The doctor was supposed to have discovered certain personality types who were unfit to hold a driver's license. He tested such things as how one reacted to the sight of blood, whether one blushed easily, and how carefully one moved an object through a maze
(if the examinee bumped the walls of the maze this was supposed to re-
veal his accident proneness). This approach to accident causes tended
to brand those who became involved in a so-called "at fault" accident
as abnormal. While not presented as typical of insurer attitudes, the
illustration may serve to demonstrate, in an admittedly exaggerated
fashion, the perhaps natural inclination of insurers to over-emphasize
the role of the driver in the occurrence of traffic accidents. Over-
all the approach of insurers in the mid-1920's to early 1930's empha-
sized the necessity of voluntary correction of driver habits and at-
titudes such an emphasis naturally precluded a demand for a broad pro-
gram of government activity.

One prominent insurer, The Travelers Insurance Company of Hart-
ford, Connecticut, has issued annual motivational booklets on traffic
accidents for many years. In the form of tables of statistics of the
type published by the National Safety Council and in accompanying car-
toons this company has publicly distributed through safety education
centers an annual review of the traffic accident situation since 1931.
Such recent titles as "Attitudes and Platitudes" and "Alcoholocaust"
indicate its general nature. Another insurer, Nationwide Insurance of
Columbus, Ohio, has presented to over 300,000 high school students
since the early 1950's a dramatic display of the danger of following
other vehicles too closely or otherwise putting too great dependence on
automobile brakes. In an actual street or highway demonstration a
specially triggered paint gun marked the position of the auto on the
highway when a signal to stop was given to a demonstration driver.
The actual stopping distance traveled between the point at which the
signal was given and the point at which the car came to a halt was then clearly visible to students or other spectators thus proving that one could not "stop on a dime."

In addition, insurers were active in providing films, speakers, safety demonstrations, and in distributing literature especially devoted to driver attitudes. However, insurers in general emphasized conventional knowledge and approaches before the mid-1950's.

Society's moves toward introducing more compulsion into the purchase of insurance demanded greater and greater extensions of the automobile liability insurance coverage. Companies broadened their basic coverages, largely to forestall state compulsory requirements, to include situations and drivers which underwriters had in the past studiously avoided as bad risks. The "omnibus" clause, covering all drivers of an auto except in case of a theft, in general use by the early 1930's, and the automatic extension of coverage for the insured to drive other cars than his own, were examples. The move toward greater compulsion brought from state officials a desire for a more standardized policy. This was accomplished in the mid-1930's. Companies also developed additional coverages (1941) which extended payments for bodily injuries or death to its own insured and others which might otherwise have been possible subjects of lawsuits. These changes, while perhaps due primarily to the natural and normal growth of an industry in the direction of extending additional benefits to its clients, can also be regarded as partly due to the threats felt by the industry from possible government encroachment as a result of pressures from the traffic accident problem. 6
In the late 1930's and early 1940's, as strict financial responsibility laws were enacted by state legislators in pursuit of highway safety and victim remuneration, insurers were required to design and operate assigned risk insurance plans. Assigned risk plans have required that insurers provide liability insurance for those who could not obtain insurance through normal means. This service the state governments felt compelled to offer in the interests of subjecting all drivers to the safety influences of insurance and of providing a financially solvent person to sue in as many accident cases as possible. This compulsory action grew out of the state's having made insurance a practical necessity for use of the highways. Assigned risk plans have generally proved to develop serious losses for insurers. Thus, in another way, misdirected, missing, or ineffective safety measures have helped to put pressures on insurers who have only partially been able to recoup their losses from their regular policyholders.

Throughout nearly all the years of this study insurers revealed a marked desire to retain state control and initiative in matters of highway safety and insurer regulation. When a threat of replacing state with federal regulation over insurance arose in the mid-1940's, insurers resisted this possibility. Had centralized regulation been effected, it could well have enabled the nation to focus on the root causes of the traffic accident problem. The immediate threat of federal intervention came as a result of the decision in the case of the United States vs The Southeastern Underwriters Association. In this 1945 case the Supreme Court reversed an almost century-old decision (Paul vs Virginia, 1869) that insurance was not interstate commerce. A
major concern of the Court was the increasing use of rate-making in concert, which use threatened to end competition among insurers. In order to avoid federal regulation, insurers and state officials hastened to cooperate in developing new and thorough regulatory laws which with federal approval retained state controls. This struggle helped to turn attention away from the more basic traffic accident problem. Policy-making in regard to both the traffic accident problem and direct insurance response to the public interest remained at the state level. Factors involved with traffic safety remained, after 1947 (the year in which most new state regulations were enacted) as they had since 1925, subject in many states only to spasmodic and often ineffective action and control. A strong and continuing national focus on safety and insurance problems, as might have been expected, did not develop until sometime later. But other pressures were to cause insurers to give greater attention to traffic safety measures.

Pressures converging upon automobile liability insurers reaching a peak by the late 1950's. Some involved greater economic security, like to those which had helped to bring about workmen's compensation, unemployment insurance, and social security as government policy. Reliance upon the individual, his family, or perhaps charity of friends and neighbors or local communities were no longer fully acceptable as means of meeting the economic perils of accident, sickness, unemployment or old age. Social insurance programs pooled and redistributed many risks to individual security. But these coverages were limited. The new social insurance benefits provided were far below 100 per cent of the losses and despite increasing ownership of private insurance
many of the insurable hazards remained uncompensated or undercompensated. The uncompensated auto accident victim, increasing somewhat in total numbers and considerably more in public awareness, became one of the phases of the traffic accident problem which caused demands for action by public authorities. One prominent example of this was the pressure for a national accident and health insurance program such as that urged by President Truman in the late 1940's.

More directly connected with the automobile bodily injury liability insurance field were the continuing suggestions for abandoning the fault system of determining which accident victims would be paid and which would not. In the late 1920's Judge Robert Marx of Ohio and others had suggested substituting a compensation system, under which all or nearly all victims of auto accidents would be paid, almost regardless of fault, for the negligence system. Again in 1932 as a result of a study conducted through Columbia University a compensation plan had been urged. By the middle and late 1950's at least two other plans had been put forward substituting the compensation principle for the negligence principle. The Canadian province of Saskatchewan introduced a limited "no-fault" compensation plan in 1946. Nonetheless, all states held fast to the fault system as a safety incentive and either encouraged or forced insurers to make adjustments in their operations to meet the rising demands for a more certain system of reparations for auto accident victims.

One significant way to assure that more victims would be paid was to increase the percentage of insured automobiles. New Hampshire led the way in 1938 by strengthening their financial responsibility law.
Other states followed suit during the 1940's. The most striking element of these new laws was to require the automobile owner to show that he had insurance to satisfy damages growing out of almost any moving vehicle accident. The uncomfortable alternatives were to post a cash bond for the amount of damages or to secure a release for all liability from the injured party. This move was successful in greatly increasing the number of insured automobiles and compensated victims. But it did not satisfy legislators in all of the states. A significant number of drivers remained uninsured. This was partly responsible for a new threat to the private enterprise status of liability insurers which arose during the late 1940's and continued into the 1950's.

This threat was known as the unsatisfied claim and judgment funds. Such funds were created in North Dakota in 1948, in New Jersey in 1954, in Maryland in 1957 and in New York in 1958. These state-owned and operated insurance funds are designed to pay the victims of an automobile accident when a judgment is uncollectible because the defendant has no insurance or other assets, his insurer is insolvent, or because his insurance contract is void. Insurers generally regarded these funds as even more reprehensible than compulsory insurance because they placed the state in the role of paying claims threatening the very raison d'être of private insurance.9

At this point the spectre of compulsory insurance rose again. In 1957 New York enacted a compulsory insurance law followed by North Carolina in 1958. These developments, coupled with the assigned risk plans discussed above, placed greater pressures upon auto insurers to provide insurance for everyone: good, average or poor risk. Selective
underwriting practices and refusal to insure bad risks had in the past permitted insurers generally to maintain a profitable business in liability insurance. Now they were under greater pressure to insure and retain marginal or poor risks. The compulsory or semi-compulsory insurance laws had made liability insurance practically a public utility, deemed essential for all by the public.

The fault system, long unobserved in many actual cases, continued to be ignored in a large percentage of claims of doubtful validity. With almost everyone now a potential customer, competition among insurers, stimulated by the new open competition laws following the SEUA decision of 1945 became extremely intense, tending to hold prices for insurance down. After about 1953 insurers began operating on very narrow margins of profit and in many cases began experiencing losses from their operations because of adverse selection, intense competition, and because insurers felt called upon to pay for accident costs which were not insured by the terms of their contracts.10

Though the fatality and probably also the injury frequency per 100,000 vehicles were decreasing in the post-war years, several other factors besides those mentioned above were tending to have an adverse effect on the insurers' profit-and-loss picture. The size of bodily injury awards grew rapidly. For example, in 1943 the mean judgment for an automobile bodily injury suit in Los Angeles County was $2,766 but by 1954 it had risen to $6,980.11 With a large percentage of all drivers insured, juries apparently tended to assume the existence of insurance in nearly all cases coming before them. The frequency and size of awards for the plaintiff increased as juries moved further away
from the negligence theory and closer to that of absolute liability on the part of the defendant motorist, assuming that not he but his insurer would bear the cost of the judgment.

State governments after the SEUA decision tended to more closely regulate rates. Regulatory authorities generally held to the procedure of basing future premiums on past costs, with a resulting lag of premiums behind losses. By 1958 the traditional stock company insurers now beset with competition from new types of insurers, were generally showing underwriting losses on the bodily injury liability line. In fact, in the decade 1948-1958, stock insurers posted a loss of about $425 million dollars.\(^\text{12}\) A review of the Ohio bodily injury experience of all stock and mutual insurers in the period 1951 to 1953 compared with the 1954 to 1956 period revealed that loss ratios increased from about 54 per cent in the earlier period to about 63 per cent in the later period.\(^\text{13}\) (Loss ratios above 60 per cent were generally considered excessive for a profitable operation.)

It seems significant that insurers at about this time greatly increased their efforts in the safety field. Insurers recognized, of course, that if traffic accident problems could be more effectively attacked, retrospective rating (that is, ratings based on past experience) could then work to the advantage of the insurers. It is in the framework of the several pressures, including the threat of governmental interference and rising loss ratios, that the greatly increased attention given by insurers to traffic safety beginning in the late 1950's can best be understood. Two major developments illustrating greater insurer interest in safety took place in the late 1950's. Working in
coordination with Cornell University's Automobile Crash Injury Research Institute, Liberty Mutual Insurance Company developed a model "safety car." This car, reconstructed from an existing automobile, incorporated injury reducing safety features determined from statistical data concerning the type, frequency and causes of injuries in auto accidents. Introduced to the public in 1957, the car resembled a conventional, contemporary four-door sedan. It incorporated sixty new safety features and was designed to permit occupants to walk away from a head-on collision at 40 miles per hour. Seat belts, shoulder harness, padding, and head rests were among the features introduced by this vehicle which have become standard safety equipment now required by federal law to be included in new autos. Many other features included in this and a later safety vehicle have given impetus to research and implementation of similar safety features in the automobile market.14

The second development of the late 1950's was the creation of the Insurance Institute for Highway Safety (IIHS). Created in 1959, this organization has set direction for joint action by leading auto insurers. In structure and management it is an independent, non-profit, scientific, and educational organization dedicated to reducing losses resulting from crashes on the nation's highways. It is supported by the American Insurance Association (stock insurers operating on the traditional American agency system), the Automotive Mutual Insurance Companies, and the National Association of Independent Insurers (consisting of mutual and stock insurers which typically operate through agents representing one company or group of companies operating through a single management). While operating on a small percentage of the
total insurer funds devoted to highway safety, a typical budget (1968) was two million dollars making a total of sixteen million dollars allocated to it from its inception, it has sought to bring significant support to already established safety organizations.  

Shortly after the IIHS was founded, its president, Russell I. Brown, outlined the approaches which the organization would take. Calling the traffic accident problem an epidemic (thus connecting safety work to methods used in public health problems in general) he announced that the organization would seek to develop a total problem approach and that the emphasis would be upon "widespread application of the things we already know." The organization would make grants-in-aid to programs already functioning and it would provide assistance "to obtain coordinated official programming." It was anticipated that based upon surveys within limited areas (such as in two or three states) the organization would support desired activities of state and local officials. In the surveys IIHS would assess states in relation to "political stability, tenure in office, composition of the legislature, the strength, interest, and bias of influence groups" in order to determine where pilot programs might be begun in the hope that these would become models for other areas.

After a preliminary survey and after official invitation and sanction from the state governor and other concerned officials, the IIHS would make an evaluative study of "accident records, education, enforcement, engineering, laws, administration, public support, public information and courts." National Safety Council's inventories of these matters would be used and supplemented by further data when
needed. It was intended that once the evaluation revealed the needs and priorities, needed changes would become the state's program for action. The IIHS would then seek the aid of other organizations in bringing about solutions, for example, in the case of needed traffic statutes, the aid of national and state bar associations would be enlisted, or in case better police training were indicated, the aid of police training organizations such as the Northwestern Institute would be sought. The IIHS sought to become the "catalyst" that accelerated safety action throughout a state.

Finally in describing the IIHS as perhaps a cautious approach but a scientific application of facilities and money, President Brown returned to his medical analogies. He stated that the "vaccines" of prevention were available, that the IIHS would attempt to convince people and state governments "to take their shots" and that his organization would seek to "promote the innoculation process."

A brief resume of major grants to various organizations taken from the annual report of the IIHS for 1966 reveals the types of safety activities which the IIHS had supported. The grants listed and their uses follow: the American Association of Motor Vehicle Administrators received $372,426 from 1959 through 1966 to provide state officials with training and other aid in improving driver licensing procedures and records and related activities; the Bureau of Highway Traffic, Yale University received $139,000 from 1959-1966 for graduate level traffic engineering study. Much of the aid went to students who then went to work in government positions dealing with traffic operational and safety problems; the Center for Safety Education, New York University
received $579,666 in this period for training in traffic safety and
driver education fields, for counseling of state governments in traffic
programming, and for assistance to universities in establishing safety
education centers. 17

Other grants from 1959 to 1966 included: $615,720 to the Interna-
tional Association of Chiefs of Police for research and distribution
of information to police departments and appearances before govern-
mental bodies; $43,000 to the National Commission on Safety Education
of the National Education Association for promotion of driver education
in the schools; $150,496 to the National Committee for Motor Fleet
Supervisor Training for educational programs in accident prevention for
the motor transportation industry; $140,500 to the National Committee
on Uniform Traffic Laws and Ordinances for the development and promo-
tion of uniform traffic legislation among the states; $959,795 to the
National Safety Council for field services to states and communities
including demonstrations of the usefulness of accident record systems,
promotion of driver education, and aid in implementing the requirements
of the National Highway Safety Act of 1966; $1,583,150 to the Traffic
Institute of Northwestern University for education of traffic law en-
forcement officers; $699,975 to the Traffic Court Program of the Ameri-
can Bar Association for traffic court studies and for traffic court
conferences for judges. Small contributions were also made in this pe-
riod to the President's Committee on Traffic Safety for development of
citizen support of traffic safety activity and to the Institute of
Traffic Engineers for a program of technical assistance to cities and
states on matters of safe roadway engineering. 18
Earlier mention has been made of the National Highway Safety Act, Public Law 89-564, of 1966. It has been observed that this law provided an active role for the federal government in traffic safety matters as opposed to the earlier advisory role. Under the provisions of the Act each state was required to have a highway safety program that was approved by the Secretary of Transportation. This Act impelled an evaluation of state traffic safety activities in the various states. It also furnished a focus for greater direct action by the IIHS and by some individual insurers. The IIHS undertook a program to publicize and mobilize action in behalf of the standards announced under the provisions of this law in 1967 and 1968. The IIHS program called "Operation Cover-all" was an educational program which consisted of making available to the public certain material in support of selected standards of the 1966 act, prepared speeches for use by insurance personnel, background reports, and materials for distribution at public meetings. These speeches and materials were intended for presentation in meetings of social and civic organizations in local communities as well as in safety conferences at state or local levels.

IIHS selected six areas for emphasis. Materials, speeches, and background reports are devoted to areas of: driver education; driver licensing; traffic records; motor vehicle inspection; emergency medical services; and the alcohol problem. The materials present the seriousness of each area and the necessity for action and ways to bring political action. No rationale is given for the selection of these areas for emphasis and for ignoring the other ten areas. The areas selected
do emphasize the driver role in relation to the traffic accident problem as might be expected of an insurance association.

In summary, the evidence indicates that the IIHS previous to 1968 sought out limited areas where the political climate was right for practical experimentation and where interest already existed in obtaining progress in traffic safety. They sought to bring expert advice to bear in areas only where they were invited and then at the administrative level. There is no evidence to suggest direct lobbying for specific legislation. The IIHS sought to intensify interest where it existed at such a level as to indicate probable success. They displayed faith in existing private or semi-public organizations by making grants to associations with programs already in existence. They did not seek to blaze new trails but to use the best knowledge obtainable through existing research.

The comments of insurance texts in the 1960's as well as their activities revealed that insurers were dubious of obtaining the massive breakthrough in the traffic safety that was required to improve their position. This was so despite the fact that insurers in the general casualty and fire insurance fields had previously been credited with important contributions to safety, especially, for example, in regard to fires in homes and industry and in regard to accident prevention from steam boiler explosions. Inspections of factories, homes, and boilers by insurer representatives familiar with safety hazards provided the means for preventing injury accidents in these areas. Automobile safety, however, presented a much more tenacious problem. Insurers were able to make advances in regard to commercial fleets,
especially in the area of truck fleets. Careful driver selection, regular inspection and maintenance of vehicles, and surveillance of driver performance were items within the control of fleet owners. Insurers developed and applied specialized knowledge in these areas in cooperation with commercial fleet operators. Outstanding safety records rewarded the fleet operator with lower operating costs including lower insurance rates based on the fleet experience. But the controls available and the factors present in these areas are not applicable in regard to the individual automobile risk. 19

Insurers felt themselves to be faced with limitations of ability and finances in regard to safety programs involving the individual private passenger automobile. The gains in industrial, and fleet automobile safety rested upon surveillance, a policing function, which could be exercised primarily in cooperation with an employer who had the power to discharge an employee chronically involved in unsafe actions. The employer also could greatly affect or control the environment in factories and in regard to vehicle conditions in such a way as to promote safety. These areas were largely outside of the direct or indirect influence that insurers could bring to bear in regard to individual passenger car risks. Such engineering and enforcement activities were largely in the hands of political authorities. Refusal to insure the "bad" driver was an ineffectual and politically unfeasible approach since the assigned risk plans required reassumption of many of these risks and because too many cancellations brought threats of state-operated or compulsory insurance.
In the matter of education of the public toward better safety attitudes, insurers faced the practical limitation of finances. At the time when loss ratios soared, indicating a dire need for increased safety activity, these same soaring loss ratios meant a heavy drain upon insurer surplus funds; and it was only from surplus funds that the immediately demanded safety expenditures could be realized only at some time in the future. Realizing that "a point will eventually be reached when the cost of conservation efforts will equal the future return in the form of savings," insurers remained quite conservative in their expenditures in the auto safety field. Much of the insurer effort continued to be directed to securing coercive governmental action in the safety field. Circumstances were to dictate, however, an even more active role for insurers. The evidence indicates that a great deal of agitation, irritation, and frustration has existed in regard to the traffic safety movement in recent years. Some of the chief book-length criticisms published in 1964 to 1966 already mentioned are cases in point. As already indicated, government leaders assigned a much larger safety role to insurers than insurers managed to fulfill. As the traffic accident problem climbed to an even more intolerable level, insurers, as part of the so-called traffic safety establishment, came under fire in Ralph Nader's, Unsafe at Any Speed (1965) and in commentaries. Insurers countered that their safety role can hardly be more than a cooperative one; that the building and maintenance of highways, the designing and equipping of cars, and driver education and safety motivation can only partly be influenced by insurers. These activities,
insurers pointed out, must be backed by the coercive powers of government. 21

Nonetheless, insurers did step up their level of direct political activity and perhaps more importantly by the late 1960's accepted and supported the leadership role then exerted by the federal government. This increased activity and changing political emphasis perhaps contributes something to the understanding of how American society attempts to make the social adjustments required by technical change.

It has already been noted that converging pressures of the late 1950's including high loss ratios and the new threats of government encroachment evidenced by greater regulation, new compulsory insurance laws, assigned risk plans and unsatisfied judgment funds caused insurers to create the Insurance Institute of Highway Safety in 1959. The upward trend in the traffic accident fatality rates beginning in 1962 was accompanied by a much worse trend in loss ratios and major critiques of the traffic safety movement published in the mid-1960's. The result was a dramatic reversal of the insurer's moderate, low-profile approach to safety characterized by caution toward automobile manufacturer's sensitivities and opposition to federal leadership in the traffic safety field. In light of a chief purpose of this study, which is to explore the responsiveness of a private industry to broad social demands, the criticisms of insurer's safety activities and the reasons for insurer's traditional attachment to state rather than federal leadership is especially interesting. It is equally interesting and instructive to examine the insurer's changes in approach, their
growing self-criticism, and also their continued reservations about the efficacy of governmental safety leadership demands upon insurers.

Mention has already been made of Ralph Nader's criticisms of insurers in *Unsafe at Any Speed* (1965). His criticisms may have been highly influential in the change insurers exhibited in regard to their support of federal safety leadership after 1966. Nader's work may have also been influential in the insurers' critical self-evaluation of their safety efforts. Nader especially criticized insurers for paying too little attention to their own records as the source of valuable data for corrective measures. Of particular note was data relating to which makes and models of automobiles were most frequently involved in accidents. He also argued that the nature and severity of injuries in relation to the interior design of automobiles could be gleaned from insurer records. Nader noted that as early as 1937 an editor of a monthly journal for casualty underwriters, *Safety Engineering*, had studied the traffic accident problem from insurer records. The editor had emphasized that automobile interiors should be so designed as to prevent serious injury to the occupants of an automobile when involved in an accident at moderate speeds. He had noted that a "second collision" occurred in an automobile accident. This took place when the occupants were tossed about following an initial collision. The immediate source of injury would be from striking a part or parts of the interior of the car. Correct design would eliminate or greatly lessen the consequences of such occurrences, he contended. Insurers, he intimated, had information essential to determine these and other danger points in the vehicles.
Nader expressed dismay that the insurers did not make political use of the statistics which in Safety Engineering safety rated makes and models on design features over a three year period. The intimation was that insurers should have seized upon these findings and directed a mass public campaign for corrective measures. Nader also contended, in a statement partially contradicted by insurers, that insurers had accumulated for years "a secret horde" of information useful for an attack on the traffic accident problem. Nader contended that information of life-saving import was being denied to the public, to policyholders, and to insurance actuaries; the latter of which "could design a vehicle-rating policy aimed at loss reduction." 22

Nader further contended that the most important reason for insurer inaction on auto safety is the unwritten law that large business groups never attack one another over a fundamental issue publicly unless they see their survival at stake. A determined and unilateral program by underwriters for safer automobiles would strike the automobile industry at its most sensitive level—that of marketing strategy and possible exposure to governmental regulation. The consequences of such an upheaval would be likely to unleash forces for change in more than one direction—forces beyond the control of both industries. Marketing freedom and minimum government control are very important to the insurance industry as well as to the automobile industry. Any radical change in the country's perspective on traffic safety would inevitably mean a larger role for the federal government, Nader contended, and insurers, he said, wished to avoid such action. Insurance companies supposedly had learned how to handle state insurance commissioners, and
the prospect of any federal attention to their business, the argument continued, alarmed them greatly. Nader further charged that insurance people in 1964 attacked a congressional bill to establish a national accident prevention research center because, the insurance people said, it duplicated efforts being satisfactorily performed by private groups.23

In a commentary on Nader's charges it can be noted that auto manufacturers and those dependent on the sale of automobiles have looked unkindly on publicity that has tended to brand the automobile as dangerous, thus threatening to reduce sales. An important source of business could be lost to the insurers if auto manufacturers were to make greater use of their associated insurance firms which already have written the collision and comprehensive coverages for many automobiles sold by auto dealers on finance plans. It is conceivable that given the arousal of sufficient enmity, the dealers could remove their own considerable business covering their dealership's buildings, equipment, merchandise, and operations from the open insurance market and place it with subsidiary insurance firms established by the auto manufacturers. Perhaps only a former sales agent for an insurance firm, such as this writer, can visualize the furor that would be created within the insurance industry should insurance management launch the industry on a course that would create ill will between the insurance industry on one hand and auto manufacturers and its dealers on the other. It could well be suicidal for a single company to begin such a public campaign since sales agents might end their connections with such a pioneering firm.
The point of including the foregoing statements about insurance corporate citizenship in this paper is not to criticize the insurance industry for whatever shortcomings it has had in public responsibility in safety matters. The point to be emphasized is that both the automobile and insurance industries have been victims of circumstances which have prevented either of them from leading a vigorous, total-problem approach to achieving traffic safety. Their first obligation has been to produce products and services that appeal price-wise and otherwise to their customers. They cannot ignore the primary demands of their consumers and survive in a free economy. An important automobile executive has stated that "our dealers discovered the hard way the public wasn't ready to give top priority to safety in the cars it was buying." And that "we're going to keep working on vehicle safety—committed to developing cars that are as accident-proof and crashworthy as possible while remaining something that people will still want to use—meaning they have to be economical, convenient, dependable, quick, comfortable, and attractive as well as safe." In light of the above comments it cannot be expected that the insurance industry would readily and openly attack this position. That insurers by 1970 did strongly lobby for action by a federal bureau in regard to auto design and equipment seems quite significant.

The insurer's strong past attachment to state leadership is also evident. So long as pressures for more effective safety measures were tolerable, insurers felt far more secure with state leadership. But state governments have faced extreme difficulties in becoming strong exponents of safety measures involving the design of vehicles and in
other safety areas for reasons that will be mentioned below. There has been strong sentiment among insurers and auto manufacturers for continuing control of safety measures by the states. States have been looked upon as much less drastic and innovative and more amenable to the aims of auto manufacturers and insurers in their approaches to safety than the national government would be. Briefly, the states could be looked to for the more stable and conservative approach which traditionally has been the epitome of good government in the eyes of the business community.

This stability and conservatism of the states in the face of the need for dynamic and liberal changes may largely have come from a position of weakness rather than a conscious desire to curtsey to the wishes of the business community. It is usual for texts on American government to point out the dilemmas which state governments face in dealing with large corporations. Key employees of the corporations are often a chief source of campaign funds for state legislators; sometimes whole states and often several decisive legislative districts within the states are economically dependent on one or two key industries; industries may refuse to locate factories or branches, or may remove those already so located, in states which regulate their businesses too closely or tax too heavily. These are some of the factors which tend to make state governments very cognizant of industry attitudes and at least somewhat responsive to these attitudes when safety or other public interest campaigns strike too close to the corporate self-interest.
This generalized statement of state government and business relationships goes on to argue that business interests possessing a rather narrow view of the public interest, or perhaps not considering it at all, have had, for the general good of the nation, too great an influence on government. It further argues that business fails to possess or perhaps to exercise a social conscience. Economists and leading business educators have pointed out the need for business to consider and to act upon its relationship to the total society from the point of view both of the good of the whole society and of profit-and-loss. Insurers have been encouraged by their own educational elite to adopt a total problem approach to the auto insurance problem rather than, for example, to concentrate on opposition to compulsory insurance. The new devotion and direction in regard to the safety problem can be viewed as evidence of the growing emphasis on corporate citizenship.

Though many examples could be cited to reveal the auto safety directions taken by insurers after 1966, a few prominent pieces of evidence are cited for illustration. The first concerns the IIHS program undertaken in support of the National Highway Safety Standards of 1966. The second reveals something of the lobbying activities and techniques of the IIHS. The third discusses a recent representative pamphlet issued by an individual insurer urging citizen political activity.

"Operation Cover-all," the IIHS program supporting the national safety legislation of 1966, consists of a packet of educational materials which indicates support of all sixteen program standards.
issued as a result of this legislation. A fifty page booklet explains each of the standards, e.g., vehicle inspection, driver education, alcohol, etc.; a series of leaflets addressed to the general citizen points out "what you can do" to aid "America's hope—transformed into a promise in the war against traffic accidents;" a series of prepared speeches provides insurance personnel or others with motivating information to pass along to the public in regard to various phases of the federal standards.

In the bi-weekly Status Report, the IIHS began in 1970 to distribute news to its members reports on progress in high loss reduction. Among other items it recorded lobby activities by IIHS staff members directed toward the National Highway Safety Bureau. Much of the discussion in these status reports was devoted to safety in relation to automotive equipment and design. The activities of the Department of Transportation as regards auto manufacturers were closely reported. Even some of Ralph Nader's sponsored organizations and their findings were favorably mentioned in a number of instances. For example, Nader's charges that a secret "black book" of auto repairs existed which listed repairs that would be made free if owners strongly insisted was given prominent space in the issue entitled "Money for Traffic Safety" of October 15, 1970.

In pamphlets issued by Allstate Insurance probably in 1968 or 1969 it was urged that all highway user revenues be dedicated equitably to road construction, maintenance, and traffic management. Especially deplorable according to the pamphlet was the "shockingly small percentage" of highway revenues allotted for supervision of traffic. The
pamphlets also urged an allocation of automobile insurance premium taxes as a highway-user revenue "after first allocating that part necessary to support vigorous, competent regulation of auto insurance by the state insurance regulatory agency." Also pointed out were two particularly significant national traffic statistics: (1) "America's total investment in its transportation network and the vehicles that use it was estimated to be $90 billion. Yet, we are spending as little as $300 million a year (a fraction of 1 per cent) to supervise and protect that investment." The pamphlet also states that, "the poverty being experienced by official traffic management agencies today must end if anarchy is to be removed from our streets and highways." The pamphlet refers to the necessity for better financing in order to meet the requirements of the Highway Safety Act of 1966, "our great new national law designed to achieve safer highway travel.\(^{25}\)

The pamphlet closes with a section on "what you can do to help" which outlines a three point program focused on political activity. Allstate urges a check with the state highway safety officials to determine the adequacy of the situation in the state, and assuming it is found inadequate, the action then urged is the formation of a action committee which will then educate itself as to the reasons for the inadequacy by inviting knowledgable persons to address the group and finally will "go after the right kind" of traffic safety financing or periodic inspection by telling federal, state, and local officials the lawmakers how the committee feels about the matter. Once the action committee, formed by local citizens, has decided on the needs on the federal, state, or local level and has contacted legislative and
administrative officials it is urged to launch a community education program to rally support for specific traffic safety programs. It is suggested that resolutions and petitions be sent to government officials and legislators. Also it is urged that each petition and resolution be publicized in the local newspaper.26

There is other evidence of individual insurers taking a strong interest in following through on the Highway Safety Act. For example in a speech on October 9, 1967 before the Insurance Club of Columbus, Ohio, the Safety Director of Nationwide Insurance, F. E. Laderer, explained the 1966 National Highway Safety Act provisions. Emphasizing the driver's role in traffic accidents he urged that all company agents and employees vocally support the program in all of their business and personal contacts. In his concluding statement he said, "If we fail to act, we may be further inviting government to take over the auto insurance business. What will it be—cooperation or abdication?" Earlier in the speech Laderer had taken note of the past growth of the national government's regulation of steamship, railroad, trucking, and aircraft industries and he was anticipating the possibility of further controls in the automobile and related industries.27

The National Underwriter, a prominent insurance journal concluded in 1968 that, "auto insurers spend more time, effort, and money on traffic safety than other business." The Underwriter estimated that insurers spent fifty million dollars in 1967 in this effort.28 The Ohio Insurance Institute concluded in 1970 that insurers spend about forty million dollars annually and that, "no other segment of the
American community can match the insurance industry's contributions, leadership, and concern in this field. Nonetheless, insurers were still quite critical of their own and the total effort being made in safety. In a 1967 conference sponsored by Travelers Insurance, a number of outstanding safety experts were brought together to suggest ways in which insurers might be more effective in safety leadership. In the conference much of what had been said in Nader's Unsafe at Any Speed and in Arthur D. Little's State of the Art of Traffic Safety was said again or elaborated upon by Daniel P. Moynihan, government advisor, David M. Boosman of Arthur D. Little, Inc., William Haddon, Jr., then director of the National Highway Safety Bureau and others.

Moynihan and Senator Abraham Ribicoff called upon insurers to make public their collected data, which action they felt would be a valuable contribution to safety efforts. Moynihan noted that the automobile industry had failed to take cognizance of the second-order effects of technology and as a result had lost much of their freedom of action in the 1966 safety legislation applying specifically to auto design and equipment. Echoing Nader, he observed that insurers had surrounded themselves with "ineffective and incompetent traffic safety organizations," just as auto industry had. He insisted that insurers had stopped trying to solve the problem and were content with managing it; insurers were, he said, indifferent to internal criticism and slow to respond to outside critics and insurers had too often responded to safety conferences by sending a "traffic safety brush-off man" to the meetings.
In reaction, Arch Seymour, Chairman of the Board of Directors of the IIHS, stated that insurers were going to approach safety more in terms suiting the highway environment to the frailities of the human being. He was apparently near to accepting Nader's suggestion for an additional accident definition, i.e., an event caused by a failure to require the technology of the auto and the roadway to fit the capabilities of the driver. But Seymour also contended that data collected by insurers did not really offer a great deal of guidance in relation to traffic safety. Insurers instead could furnish valuable clues to potentially troublesome human factors. To some extent insurers could also furnish clues to troublesome highway and vehicle factors. Seymour admitted, in reply to Dr. William Haddon, then of the Federal Highway Safety Bureau, that insurers may have been deficient in not making more of this information available to safety experts.31

However, Seymour and other conference representatives pointed out that insurers are not first on the accident scene nor are they equipped with expert medical personnel, vehicle and highway engineering experts, psychologist, sociologist, and optometrists required to thoroughly investigate accidents. Several speakers indicated that society, disturbed over a tenacious and stubbornly yielding problem, had historically sought scapegoats for the traffic accident problem. Automobile drivers, the highways, the automobiles, as well as insurers had been attacked as the chief cause of auto accident deaths and injuries. In recent years, conference speakers noted, it had been realized that the states left to their own devices would not bring the necessary coercive
force to bear on the problem. Federal legislation was now available and could be used as a basis for opening files and compelling testimony from auto manufacturers and from insurers. Insurers could cooperate only grudgingly, but on the other hand they could cooperate wholeheartedly. Apparently the latter path was being followed by 1968 as is shown by the evidence cited above.

Insurers were by no means totally optimistic by 1968 concerning the chances of improving the accident problem or the approaches being taken to it. Note the comments of insurance text writers C. A. Kulp and John W. Hall:

Too often, the legislative bodies are content to "attack" and to "solve" a very complex socio-political problem by imposing restrictions on great businesses that are least able to solve the problem, and that can accept such restrictions only by ceasing to provide the needed services which they were organized to furnish. Safety standards imposed upon automobile manufacturers will hardly faze the problem. Compulsory automobile liability insurance cannot make the highways safer. In fact, liability insurance tends to destroy the deterrent effects of the tort law system. Both of these "solutions" are important. Both are fops to the American public, which is so unconcerned about highway tragedy that it cannot demand real research into accident causes and substantive solutions based upon adequate driver qualification involving physical, mental and psychological criteria. Perhaps real political leadership and statesmanship are needed.32

It was evident however that insurers intended to continue their new devotion to the safety problem. By 1969 insurers had selected Dr. William Haddon, Jr. who is regarded by many as the most outstanding expert on traffic safety in the United States to become the head of the IIHS. Haddon has a master's degree in public health and his doctorate is in the medical field. He was senior editor of Accident Research
and former head of the Highway Safety Bureau of the Department of Transportation. Under his leadership the insurance industry seemed destined to continue to play an even more effective role in meeting the challenge of the traffic accident problem. Haddon's speeches and articles plus the IIHS Status Reports gave evidence of vigorous activity based upon the best available knowledge and also upon a keen sense of the needs for continuing in-depth research.
Footnotes – Chapter IV

1. The First National Conference on Street and Highway Safety of 1924 recommended that the states adopt some form of compulsory law in regard to automobile liability insurance.

2. The Arthur D. Little, Inc. study of the State of the Art of Traffic Safety mentioned often in the previous chapter includes an opinion that auto insurance has no effect on safety.

3. The writer found a great deal of discrepancy in the figures given for percentage of automobiles insured. The percentages mentioned are rough averages of figures that vary from 16 per cent up to 30 per cent for the earliest year; generally the estimates for the middle 1930's vary from 30 per cent to 40 per cent.

4. This vastly increased safety expenditure was suggested by members of a 1967 conference on traffic safety called by Travelers Insurance Company. This very interesting conference was reported in Hugh J. Miser, ed., Traffic Safety Strategies for Research and Action (Hartford, Conn.: The Traveler's Research Center, Inc., 1967).


6. These developments are found in the early standard text books on automobile insurance. They are individually cited in later chapters and in the bibliography.


9. Ibid., pp. 201-3.

10. Ibid., pp. 38-45. Also in Kulp and Hall, Casualty Insurance, pp. 441-455.


14. Reprinted leaflet from Alfred M. Best Company Publications, "The Safest Car in the World" (no place or date of publication given); reprint leaflet from Best's Insurance News (Alfred M. Best Co., Inc.); both supplied to the writer by Liberty Mutual Insurance Company Research Center, Hopkinton, Massachusetts. Also, see booklet "The Liberty Mutual Survival Car II" published by Liberty Mutual Insurance Company (Boston: n.p., n.d.).


18. Ibid.


23. Ibid.


26 Ibid.

27 From speech draft given this writer by Mr. Laderer during a personal interview, July, 1970.


29 The Ohio Insurance Institute, Ohio Insurance Fact Book (Columbus, Ohio: The Ohio Insurance Institute, 1970), p. 54.


31 Ibid., pp.114-119.

Professor Spencer Kimball speaks of the inertia and drift that hold sway in the formation of public policy.\footnote{1} This is perhaps nowhere more evident than when considering American society's attempts to deal with the traffic accident problem throughout most of the period from 1925 to 1968. While the extent of the problem received a great deal of attention and while it seems to have been generally agreed that the problem was one of the most serious facing the nation, attempts to reduce it to a tolerable level were on the whole pitifully ineffective.

In the first instance, a "tolerable level" of deaths, injuries, and economic costs has not been defined. (Department of Transportation Secretary John Volpe has recently (early 1970) indicated that it is realistic to expect to cut the annual death toll to one-fourth its present level.) Society has never determined as a matter of firm policy whether one traffic accident death annually for every 3,700 persons in the population, which has been the approximate population death rate for over forty years, has been too high, or as one writer stated in defense of the automobile, "not too bad." It has never accurately determined the number of severely disfiguring or seriously and permanently disabling injuries that have occurred. In other words, it has not even accurately determined the extent of the problem. If, as in
attacking any problem, it is considered essential to define the problem as the first step, it must be stated that society has not taken that first step. It is suggested here in a model approach to traffic safety, as has been intimated in much of the literature reviewed, that this first step must be firmly taken. It has been encouraging to note that in the 1960's much critical comment has been directed at the lack of a definition of the extent of the problem.\(^2\)

Much recent criticism too has been directed at the simple solution approaches that has characterized the traffic safety movement. In approaching a definition of the problem, the more carefully researched discussions of the 1960's have indicated that a system approach is necessary. A model program would place all factors of the problem, the driver, the automobile, and the highway, in focus; since it is now realized that changes in any one factor may affect the end result. For example, the best trained and best qualified of drivers (for example, General Motors test drivers) have been found to make many mistakes while driving. Since automobile accidents have come to be looked upon as the technological failure of the automobile and the highway to compensate for the human limitations of the driver, vastly more extensive safety programs devoted to both human and mechanical factors are demanded. It is evident that the public has rarely been told the whole truth concerning how very little is known about the traffic accident problem. For example, the public has not been effectively told that many experts feel that the fault or negligence system upon which auto liability insurance is based has a detrimental effect on auto safety. It has rarely been told of the great need for research including the
need to collect vastly more detailed accident data. These data would include facts about ordinary traffic conditions gathered through studies of normal traffic and traffic accident situations on the public highways as well as data to be collected in controlled experimental conditions. Since in a democracy the public must in the long run support the actions of its government, it would seem that a model program would begin by employing the very most effective advertising devices available to educate the public concerning the extremely limited knowledge now available. There is little evidence in the history of the problem, including even in the very recent popular literature, that this has been done.

When considering leadership in defining or acting upon the traffic accident problem, it would seem inevitable that such leadership should have, throughout the period of this study, been centered in the federal government. The very nature of the automobile, sold to a national market and driven on highways traversing all of the nation, was interstate. As late as 1965 United States Senator Abraham Ribicoff noted the extreme variations in signs, signals and rules of the road from state to state which doubtless has created conditions leading to hundreds of traffic deaths and injuries over the years. This was true despite the continual availability and regular revision voluntary Uniform Vehicle Codes first drawn up by the federal government as early as 1925.

Once realistic goals of reducing traffic accidents had been set in state and local communities through federal leadership and in line
with the best definitions of the problem available, the national government should have required standards to have been met by state and local governments. Since the grant-in-aid program had been used as early as 1916 to accomplish standards of highway construction it seems highly unlikely that any legal barrier would have existed for such federal action. This assumes, of course, that the public had been made aware of the need and potential in such a sufficiently attention-getting manner as to make all branches of government responsive to a public demand for effective action.

The entire argument for this model safety approach assumes that leadership would have been dynamic and flexible. Arguments against massive in-depth research into the causes of traffic accidents while rarely articulated seem to have stemmed from a pervasive feeling that almost all needed solutions were obvious. It must have seemed to many, probably the great majority, that so much more knowledge about the problem was available than could be applied given limited resources that further research appeared wasteful. Such an outlook, however, was shortsighted. Much new knowledge remained undiscovered and much remained in dispute while new construction and renovations repeated past mistakes. For lack of adequate testing, myths became conventional knowledge. Books and articles continued to appear which urged one-sided approaches. Some urged strict laws and law enforcement as the answer, some continue to pursue the accident-prone driver as the chief culprit, some singled out the inadequate streets and highways, and in recent years the automobile itself has been a favorite target. It is here assumed that a flexible, dynamic, and continuing management of
Traffic safety approaches on a federal level would have chosen the most promising of these arguments, tested them, and integrated them into an on-going system approach. Such, of course, has not been the case. Traffic safety research and development leadership at every level has been very unbalanced and scattered as has already been documented. The expertise has come from a mere handful of persons and even most of those were absorbed partly in other interests. Traffic safety research has attracted few scholars. Daniel P. Monyhan has stated that such research has not had the prestige that medical research or that many phases of pure research has had. Despite the passage of the Traffic Safety Act and the Highway Safety Act in 1966 (whose passage after so many years of inaction by federal government would probably make an interesting study in itself) this field is almost certain to lack the expertise for many years to come to cope with vested private interests and public apathy.

Nevertheless, these acts are far-reaching and potentially productive of tremendous advances in achieving fairly uniform action over the entire nation. A listing of the new federal standards and some discussion of their implementation are included in an appendix. The standards are comprehensive and appear to be well-balanced. Adequate appropriations (not so far provided!) and a strong program to train many traffic safety specialists appeared to be important keys to the success of this program which incorporates the ideals set forth in the above model program.
Footnotes - Chapter V


The social role of insurers in alleviating the financial consequences of the traffic accident problem had already been recognized by 1925. The Hoover Conference on Street and Highway Accidents of that year had recommended that all automobiles be covered for liability insurance. Also in 1925 the state of Massachusetts decided to enact this principle into a compulsory law for all automobile owners in that state. In 1926 Connecticut passed the first financial responsibility law which strongly backed liability insurance for all automobiles but did not make it compulsory. The fact that this early attention was devoted to liability insurance was of great significance to the later developments in regard to society's attempts to make an adjustment to the bodily injury phase of the social problems created by the automobile. In this approach society was in effect stating that only those injured through the fault of others should receive special assurances of payment for their injuries. As a corollary, those injured through their own negligence or simply through unfortunate circumstances should not expect government to assure compensation for them. Dozens of books,
hundreds of articles, and countless speeches and other communications have been devoted to questioning or defending the fault system and the liability insurance approach to meeting the injury problem. Many of these commented on the efficacy of substituting a system to compensate all injured auto accident victims.

What has in recent years come to be called the auto insurance problem would doubtless have been entirely different, and some would say perhaps nearly non-existent, if the alternative approach of compensation for all auto accident victims had been chosen. Some would contend that under the compensation approach society would long ago have been able to better focus upon the traffic accident problem and would have made such strides toward solving it that essentially no auto insurance problem would exist. The entire history of automobile insurance in respect to meeting the financial aspects of the social problem of auto accident injuries can be viewed as a defense of the liability system itself. Insurance policy content, underwriting and rating procedures, and claims philosophies and practices underwent important changes in order to retain the liability system as a viable, rational, and acceptable means of meeting the cost of injuries.

The essential pattern of the struggle to substitute compensation for liability insurance developed very early in the period of this study. The strong efforts in the middle to late 1960's to encourage abandonment or a basic modification the fault system for the most part essentially echoed the arguments made some forty years earlier. That the problem had become much more serious by the 1960's cannot be
doubted. The long series of adjustment had been unable to avoid more insistent problems and finally in more insistent demands for a basic system modification. This almost half century of struggle was apparently reaching a climax by the summer of 1970. The state of Massachusetts, which had been the first to decree that all of its citizens owning automobiles should also own bodily injury liability insurance, enacted a law providing that the compensation principle should partly replace the liability principle. Significant parts of the insurance industry abandoned its opposition to compensation and presented plans of their own modifying the liability system for the consideration of all of the states. Many state legislatures in early 1971 were considering these and various other similar proposals.

This study will review the various aspects of this struggle for fault system modifications. An important part of the struggle involved finding acceptable means to require or encourage the public to make full use of the liability system that was accepted. The fault or negligence system as noted had chosen as the best means for meeting the financial consequences of auto accident injuries. However, only Massachusetts in the early years of this study chose to require compulsory liability insurance as the means for its implementation. Various interest groups including insurers objected to compulsory insurance. Instead they suggested laws that would encourage the voluntary purchase of this coverage. Much of the history of the auto insurance problem involves then not only the choice of the basic principle to be followed, i.e., liability or compensation, but also the search for a means to implement the chosen liability system.
This history reveals an ambivalence in public attitudes toward the system. This ambivalence goes far in explaining the lack of a resolution of the problem. It is certain that the public and its political leadership did not fully understand the ramifications of the choice that was made. The hopes and expectations for the liability system far exceeded its accomplishments both in safety gains and in meeting the needs of auto accident victims. Much of the history of the auto insurance problem involves a series of patchwork measures by government and by the insurance industry to raise the level of the achievements of the liability system. By the late 1960's it was evident to many, perhaps most, political officials, expert observers of the insurance industry, and insurance leaders themselves that no amount of patchwork could effect survival of the liability system in its existing form. Changes that alter the nature of the system and revolutionize the auto insurance industry were widely predicted. How and why was this conclusion reached? How does a society devoted to free enterprise and the maximum of freedom of choice for the individual attempt to make some of the adjustments required by the growing use of the automobile? Or stated another way, as suggested by the sub-title of this study, how did society attempt to make the particular adjustment involved in this one problem of advancing technology? It is these basic questions that will be explored through an historical examination of society's interest in automobile liability insurance and through the insurance industry's attempts to satisfy these social expectations.

The period under study is divided into two sections, the first from 1925 through 1946 and the second from 1946 to 1968. A summary and
conclusion then draws together some of the possible meanings of this historical review in light of the findings of the two year Department of Commerce study published in 1970.

The period division may seem somewhat arbitrary because of the many developments in the late 1960's. However, the writer believes that this division can be defended. The policy coverages offered, and the underwriting, rating, and claims questions which have received so much public attention in recent years have existed throughout the years under study. The earlier years reveal the reasons for public concern over the social function of liability insurance. The essential issues under contention all developed to maturity by the end of World War II. The problems which received the enormous publicity in the late 1960's were merely heightened by developments which had their origins earlier.

The choice of the mid-1940's as a division point seems defensible because a major goal of insurers and public officials announced in the late 1920's was reached at about this point in history. When this goal, the ownership of a liability insurance by a large majority of automobile owners, was reached in the mid 1940's, it was already evident that some aspects of the problem were becoming worse and not better. The 1945 Supreme Court decision stating that insurance could be regulated as interstate commerce was evidence of dissatisfaction with one and perhaps more phases of the traditional regulation of private insurance industry. Increasing use of the automobile, and increasing internal attention of a post-war, post-depression American to a lingering social problem then became coupled with problems created by increasing competition among insurers and soon with rising insurer loss ratios,
restrictive underwriting, shrewder claims practices, and other adjustments which insurers attempted to make. The new and stricter state regulations from 1947 onward were a complicating factor. Still later, after about 1962, the increasing traffic accident problems added a further complication to the already complex and unsolved problems.

In considering the 1925-46 period in Chapter VI a brief review of society's interest in liability insurance is presented. This is followed by a relatively thorough review of the complex demands of the liability system. The arguments for and against the substitution of a compensation system are then considered in Chapter VII. Chapter VIII considers the debate over compulsory liability insurance versus the less coercive financial responsibility together with the factors which led to the choice of the latter. Chapter IX considers ambivalent public attitudes and the criticisms of the liability system in the early 1930's. That review reveals some of the important reasons for the adoption of laws designed to increase the ownership of liability insurance and the practical modifications of the fault system and of insurance policy content which took place during the 1930's. Finally, in the 1925-1947 period the purposes and implementations of stricter financial responsibility laws are examined together with the 1945 regulatory court decision.

In the 1947-1968, Chapter IX, discussion the study reviews the effects the latter day financial responsibility laws, the 1945 court decision, and the other factors listed above which led increasing to public attention to insurers' problems. A major portion of this part
of the study reviews recently presented solutions to these problems. It is interesting that these plans did not present entirely new solutions but rather revived plans that had been gathering dust for thirty years or more. The depth and breadth of these studies, the great devotion to statistically based analyses, and the thoroughness with which the multiplicity of proposals have been reviewed in the literature is some indication of the intricacies of the problems. The studies and the reviews of them offer a telling commentary on reasons for the long, painful, and tedious process required to develop what these authors hope will become a socially acceptable solution to one of man's most tenacious twentieth century problems. Chapter X offers a conclusion and future perspectives.
CHAPTER VII
COMPLEXITIES OF THE LIABILITY SYSTEM
FOR ACCIDENT REPARATIONS

Comments have already been offered on the incidence of injuries, their costs, and the individual and social problems flowing from the automobile accident problem. The Hoover Conference on Street and Highway Safety which was convened in Washington, D.C. in December of 1924 focused national attention on a problem which had already been developing for a quarter of a century. In addition to considering means for the prevention of accidents, this conference also examined means for meeting the costs of accidents. Members of the conference apparently assumed that the best method of meeting these costs was through the existing private institution of liability insurance. Conferees were well aware of the under-insured condition of the general public. A very minor portion of the public was adequately insured against the financial consequences of accidents.

The automobile had become responsible for over 20,000 deaths and probably hundreds of thousands of severely disabling injuries annually. Medical costs and loss of income for the victims and their families totalled tens of millions of dollars. Many became charity cases or government charges when the resources represented by personal savings proved inadequate. Of especial concern was the situation in which an
uninsured or otherwise financially irresponsible automobile driver caused injury to others. The social friction generated by such cases was already providing strong demands to require that all automobile owners be required to provide evidence of being able to pay for these costs before operating an automobile on the public highways.

The relationship between parties in an automobile accident presented a challenge to the existing legal situation. This relationship was based upon centuries-old common law principles, usually altered by various statutes holding that one who wrongfully caused injury to another would be required to make recompense for that injury. Liability insurance was an outgrowth of the desire to escape making such recompense. It was first written during the 19th century. It was designed for employers who desired to escape payments to employees injured in the course of their employment. Courts had sometimes held employers responsible for making payments to employees, for example, because of dangerous machines improperly safeguarded or because of the employers' failure to provide proper equipment or training. During the last half of the 19th century insurers also began to offer insurance of this type to others including business firms who operated teams and wagons in delivery services. Such business firms on occasion found themselves the subject of damage suits when careless or reckless operation caused members of the general public to be injured. When with the appearance of the automobile in the late 1890's, operators feared they might become the object of damage suits because of injuries inadvertently caused to others. In 1898, Travelers Insurance Company using the teams form of
liability policy insured a physician against such public liability. This was the first recorded automobile bodily injury liability coverage issued.\footnote{1}

It can be seen that the emphasis in these early liability policies was upon the auto owner's obligation to others. The liability insurer was exclusively concerned with protecting its client from the action of others. If the victim of an accident were perchance to be paid it would be only because the insured's client were legally obligated to make this payment. In the early years of this century, this principle was so firmly fixed that liability insurance was written as a contract of indemnity. That is, the insured was required to first pay the victim to whom he had become liable (or to be so judged by a court) and only then could he file a claim against his insurer to recover what he had paid out. In fact, liability insurance had at one time been declared illegal since it was thought to violate the long standing legal principle that the good of society required that one who inflicted harm upon another through a negligent act must himself make restitution for this act. Employer liability insurance instituted for the benefit of infant industries, as has been noted, resulted in its being made available to others seeking to escape payments owed because of negligence.

So far as injured persons have been concerned, one of the early shortcomings of the liability policy was the fact that the bankruptcy or the insolvency the automobile operator causing the injury excused the insurer from paying a claim. Therefore, recovery for an injury was often impossible even though insurance existed for the negligence of
the perpetrator and even though this negligence was proved. State laws enacted during the first two decades of the twentieth century eliminated this situation and gave early evidence of the public's interest in having bodily injury liability insurance serve the need of the injured victim. It was in this way that society first manifested an interest in having insurance serve a broader social purpose than simply protecting the auto owner from financial loss.

Given this development then the insurers had three major concerns. The first was to provide an attractive service to its potential client, the auto owner. The second was to provide assurance to public authorities that whenever an insured vehicle was operated in a possibly negligent fashion, the insurer would with possibly only rare exceptions provide financial responsibility for its client, the allegedly negligent operator. The third was to operate in such a way as to remain solvent and, in the case of the stock companies which made up the great majority of insurers, to produce a profit for the owners.

The necessity of meeting these three purposes placed strong demands upon the insurer. The offering of an attractive service required that the insurer be ready, willing, and able to defend its clients and to stand financially responsible for them in possible damage suits in most any circumstance that might arise out of the ownership, maintenance, or operation of an automobile. But it also demanded that the price for the service be one that the potential clientele would willingly pay. The attempts to meet these requirements placed demands upon potential clientele which the client often did not understand. Often
insurer representatives and certainly the general public and its government officials were puzzled or angered by the misunderstood actions of insurers. Some of the technical explanations involved follow.

In order to make the judgments required to decide upon a potentially profitable, but not excessive rate, the insurer was required to set definite limits of coverage including both the amount and the circumstances under which client defense would be offered. In the interest of a solvent or profitable operation, insurers were required to make judgments as to the character of those wishing to purchase insurance. The actions taken following such judgments inevitable created misunderstandings. The public demand that the insurer provide coverage for almost any conceivable situation often did not mesh with the requirements specified in the insurance contract concerning covered use or covered drivers. General public expectations further complicated the demands upon the insurer when, in its misunderstanding, and the evidence would indicate, failure to fully accept the legal liability system itself, it insisted that a large proportion of those injured be paid by the insurers regardless of whether they were owed according to the terms of the contract. By 1925 dissatisfactions were already aroused by the fact that many who caused accidents were uninsured or otherwise financially irresponsible. These dissatisfactions apparently were great enough to allow the public to overlook inherent and apparently irremediable problems involved in the choice of liability insurance to relieve these dissatisfactions. The making of this choice and the arguments for its chief alternative will be examined after a
consideration of the policy insurers made available and the require-
ments which it entailed.

The central parts of the automobile insurance problem seems to
involve not only the choice of a system for meeting the costs of auto-
mobile injuries but also an understanding and full acceptance of the
system chosen. It is certain that the choice of liability insurance as
opposed to the compensation approach demanded much more of the public
in matters of legal knowledge and understanding. It also involved a
kind of "hard-nosed," merciless, and unwavering standard of conduct and
justice of which the public was not at all times willing to demand of
itself. For an understanding of the social implications of insurance,
the content of the policy and the demands it placed upon the insured
must be examined in the light of the standard of conduct which it es-
established for the insuring public. The broad coverage of the policy
gives some indication of the need to set up certain conditions under
which these broad coverages would not apply if the insurance industry
were not to become a charitable institution. It further indicates the
need for care in client selection. Numerous insurers found it to their
advantage to attempt to standardize policies and procedures within the
industry before 1925. Information gathered on legal interpretations
and loss and expense statistics were shared and a somewhat united front
was developed through which it was hoped that a system for channeling
and controlling pressures could be developed.

Insurance texts of the mid-1920's reveal that a basic standard
policy framework for automobile liability insurance had been developed
by 1925. This had been done through a committee of private insurers
formed from within those companies cooperating in regard to workmen's compensation insurance. In the policy that might be described as "standard" the insurer provided coverage for accidents occurring anywhere within the United States and Canada. Different rates applied to differing territories where the vehicle was customarily used but insurers had provided against possible dissension by allowing coverage to apply on a wide geographic basis. The words in the insuring agreement of the standard policy read that the company agreed "to insure the assured against liability imposed by law upon the assured." This had already been determined to mean that the insurer would pay on behalf of the insured (the term "assured" was considered more appropriate in a contract of indemnity as mentioned above but the courts have not recognized any legal difference between the two terms.

The policy provided that coverage would include the owner's liability to others arising out of ownership, maintenance, or use of the automobile for certain purposes as stated in the declarations section of the policy. Since use included the broad term "pleasure and business" all legal uses were covered. This early policy covered only the automobile described in an item of the declarations, i.e., it did not cover borrowed cars.

The insurers, and coincidentally the rates charged to all insureds, were protected by requiring that the trade name, engine number, body type, year model, and motive power (e.g. steam, gasoline, or electric) were to be declared in the policy. A clause in the conditions section of the policy provided that the insurer could inspect the insured automobile. In this way, insurers avoided granting coverage for
automobiles which underwriters might consider to be extra hazardous, e.g., motorcycles or vehicles powered by steam which were subject to boiler explosion.

The standard policy of 1925 in the "ownership, maintenance, or use" clause provided broad coverage for many occasions. It provided coverage while it was being repaired by the owner or by a repairman whenever negligence was imputed to the owner. This latter is an example of vicarious liability in which the owner may become involved whenever someone other than the owner, but who is acting on behalf of the insured owner, causes or contributes (or are alleged to cause or contribute) by his negligence to the occurrence of an accident.

Another example of broad coverage is that afforded the owner whenever he might be alleged to be negligent under the doctrine of attractive nuisance. While responsible adults could not expect to legally overcome their own negligence of trespassing or assumption of risk if injured while examining or sitting in the insured's automobile, a small child can often be legally freed of the responsibility to avoid trespassing. Also a small child often does not in the eyes of the law assume the risk for his own safety.

For example, a parked vehicle of unusual design might entice a child of tender years to climb into it and to set it in motion resulting in an accident and injury to the child. In such a case, as in all other cases of alleged liability of the owner, legal authorities would measure the actions of the vehicle owner against the standard of conduct of the so-called prudent man.⁴
In the instant case, supposing such a case went into court for judgment, the court would decide whether the owner were liable by asking what precautions would have been taken by an individual acting with due regard to the safety of others. Such questions as the following might be asked by the court: Did the owner know that young children were present in the vicinity? If so, did he warn them or their parents of the possible danger? Did he lock the vehicle? Did he leave the keys in it? In other words, the owner would be expected to anticipate dangers to young children and to protect against them. If he did not, he might have found himself involved in a law suit by the parents of the child and therefore in need of liability insurance.

Vicarious liability might also include the insured's granting permission to use the automobile to a known incompetent driver when such driving resulted in an injury to others. By not excluding coverage for the type of accidents, the insurer provided benefits in situations which the insured might not anticipate and might not request to be covered. The insurer in its usually superior knowledge of the law, conceivably could have excluded such coverage with impunity. In granting it to all insured, the insurer rendered a valuable public service offering evidence that it would not use the finer points of the law to eliminate certain claims.

It is obvious then that insurers took it upon themselves to underwrite the judgment of its insureds in many unforeseeable cases. Another example is that of the inclusion of the so-called omnibus clause. The very early policies covered only the direct liability of the insured and the vicarious liability discussed above. However, many cases
existed in which the insured wished to have the potential liability of others, particularly in the insured's own household, covered. Before the development of the "omnibus" clause about 1918 it was necessary to request the company to issue an amendment for each such additional driver before coverage would be granted. This greatly hampered the usefulness of the automobile and increased the danger to the public of being injured by an uninsured auto. While the owner would be insured for an accident if a son, daughter, spouse, other relative or friend used the automobile in a way related to the business or pleasure of the insured himself, it did not, without amendment, cover the liability of the other user. By 1925, however, the standard policy stated that insurance would "apply to any person while riding in or legally operating the automobile described in the policy with the permission of the assured or of any adult member of the assured's household other than a guest, boarder, roomer, chauffeur, or domestic servant." This clause also included coverage for other persons, firms or corporations for which the automobile might be operated. For example, the insured or one of those mentioned just above as covered under the omnibus clause might have operated the automobile in pursuit of the business or pleasure of another as in the case of making a delivery for an employer or a friend in business. The company did require notice of such situations should they be anticipated at the inception of the policy (or later become so) as being regularly performed, but occasional use was covered without question.

The insurer did, however, exclude coverage for situations involving operation of the automobile by an automobile sales agency or
garage. The policy provided that the additional assured would not have coverage under the policy if other valid and collectible liability insurance applied to the claim in question as in a case where the additional insured was the owner of a policy providing coverage for use of automobiles not owned by the additional insured.

It can be observed that the insurer had by 1925 come to place considerable trust in the judgment of its insureds. Not only did the insurer risk the driving ability of its insured but also it covered situations in which the insured might be negligent in parking and repairing the auto and in granting use of the auto to others in a rather broad range of circumstances. The very existence of insurance, however, required certain cautions in expanding the number of situations made eligible for coverage. The legal meaning of the policy and changes made in the policy were subject to legal interpretation in the courts. Insurers were required to be careful in choosing the language to be contained in the policy contract. Under the legal doctrine of stare decisis, which held that legal precedents established in the past would control future decisions, insurance statisticians, actuaries, and underwriters, could feel somewhat assured that the rate structures established would meet the financial requirements of the insurers. But new and unanticipated situations did arise even without changes being made in the insurance policy. It was the insurer who most often bore the brunt of the situations.

Certain peculiar characteristics of the insurance policy have secured for it a special status in statutes and judicial and interpretations. The courts have sought to protect the insured because he has
been considered to be at a disadvantage in contracting with the insurer. Since it was the insurer which drew up the contract, the wording of which is standard and not a matter of negotiation between insured and insurer, courts have held that clarity of meaning is the responsibility of the insurer. Ambiguities or contradictions are construed very strictly against the insurer. This, in large part, explains why insurers have not moved swiftly to make vast changes in the policies. A degree of uncertainty existed in regard to the meaning of certain phrases in the policy contracts despite the careful attention of insurer associations attorneys. A rash of adverse decisions on policy language could easily throw the insurers into the defense and payment of claims unanticipated by the rate structure. "Bottom-line" results could be upsetting or even disastrous for individual insurers. How upsetting or disastrous would, of course, depend upon the financial condition of the individual company. But this situation explains some of the reason that insurers having been quite conservative in keeping up with the demands of the public in regard to coverage expansion or other policy changes.

It is to be noted in this regard that the standard policy of 1925 did not provide coverage in case the insured should borrow or otherwise drive an automobile belonging to someone else. As in the case of the early policies issued without the omnibus clause, coverage could be obtained for the occasional use of a substitute or borrowed car only by prior amendment of the policy which would require notice to the company or its agent.
This review of the 1925 policy now will review the source of certain difficulties which have given rise to the alleged unfriendly image of insurance companies which is a part of the so-called auto insurance problem. Some of the areas of possible misunderstandings were removed by providing a broad coverage insurance contract. Many causes for possible misunderstanding, however, are very basic in the nature of liability insurance and have not been greatly affected with the passage of time during the period of this study.

For example, an insurance policy is a conditional contract and it contains certain exceptions and exclusions. When a potential claim arises, the question of coverage is always considered first. Such questions as the following must be answered: Was the policy in force when the accident occurred? Did the policy cover the person alleged to have committed the negligent act giving rise to the claim? Was the vehicle involved the one described in the policy or another eligible for coverage as defined by the policy? Were any of the conditions of the policy violated by the insured? Were any false statements made or facts of a material nature concealed in obtaining the insurance?

For a variety of reasons any one of these questions might produce an answer that could result in a denial of coverage. The first three questions would almost always involve rather obvious oversights or mistakes which could, of course, give rise to ill feelings were coverage denied but the latter two contain elements often apparently of real mystery to the layman.

Sources of frequent misunderstandings among policy conditions were those involving duties of the insured when losses occurred. The
standard policy of 1925 provided that the assured was required to give immediate written notice to the insurer or its agent of any accident involving bodily injury to others. In the phrase made applicable to notice of any claim or suit in regard to such accident received by the insured the wording stated that these must be "promptly forwarded" to the insurer. Normally such requirements would seem reasonable, proper, and the "normal" thing that an insured could be expected to do. It has, however, been necessary to define even these seemingly simple requirements in actual cases. Some disagreements on the meaning and application of these cases have found their way into the courts. For example, a literal compliance with the requirement for "immediate" notice proved impossible. Upon the presentation of notices of loss deemed by the insurer to have not been "immediate," the word was interpreted to mean "as soon as practicable." The latter phrase appeared in the standard policy in use after 1935. In the 1935 policy editions the word "immediately" was used in regard to the insured's forwarding notice of claim or suit to the insurer.

Policyholder and public relations as well as court decisions have dictated that the insurer be lenient in its attitude toward prompt notice. Cases on record are sufficient, however, to indicate that the insured must usually do all that he reasonably can to comply with requirements. Mailing or telephoning a notice of loss to the insurer may not be deemed sufficient to satisfy the requirement that notice of loss "shall be given." It is apparently the duty of the insured that in the event that he does not give notice in person, he must in some way confirm that the insured or its agent has received notice. A registered
mail receipt may be necessary in the case of mailing; and the capacity or efficiency of a clerk at the other end of a telephone connection may not always be presumed.8

Admittedly the cases in which an insurer would not receive ordinary mail or be receiving messages through a reliable clerk are rare, the extremity of the cases illustrates the general principle of the conditional nature of the contract. Exceptional cases such as this could be used to argue against retention of private liability insurance as the chief means for compensating the victims of automobile accidents. A major argument would be that in cases such as these liability insurance is shown to be inadequate and unfair since the injured victim is denied payment even though he has a legitimate claim.

Some cases involve late notice of loss to the insurer with no contention by the insured that he gave the required notice of loss as soon as possible. The insured, in one case of late notice the insurer, stated that he did not think that he was to blame for the accident and thus had no reason to report it. Having had previous accidents he apparently believed that reporting the accident might result in a cancellation of his insurance. The insurer was required according to a court decision to demonstrate that its handling of the claim had been prejudiced by late notice. This the insurer was unable to do and it was required to provide coverage. The placing of such a legal burden on the insurer seems to indicate that the states in question (Ohio was one of these) either do not reflect an understanding of the importance of early notice or simply wish to give certain legal advantages over insureds and to the public. There is no record concerning whether or not
this state court interpretation would have met the test of constitutional due process in the federal courts. It would seem evident, whether or not realized by the judges in question, that this state court action is supportive of the theory the insurance contract law should be more lenient than other laws governing contracts. Only by early notice can an insurer adequately make its own investigation. Early investigation can help immensely in preventing fraud, collusion and protracted and expensive litigation. However, proving that the insurer's position has been prejudiced in a particular case may be nearly impossible.\(^9\)

Other states have held that unreasonably late notice alone will be sufficient grounds to deny coverage. The examination of the citations on auto insurance law by Appleman\(^{10}\) and Brainard show that this has largely been the prevailing view in most states as developed in dozens of cases since the 1920's. But it should be noted that insurers have had grounds to doubt whether the contract which they have issued, will be accepted by the courts to mean what it seems to very simply and plainly say. To the extent that it is not so accepted, or that insurers believe it may not be so accepted, the insurers must be prepared to go beyond the contract in offering coverage and eventually payment of claims which are not contemplated in the policy.

The question then calling for a value judgment is whether the insurers should have attempted to stand behind the barrier of prompt notice. In focusing on the larger picture of the good of the total public in a great number of cases, it would seem that the insurer was completely justified in doing so. The insured contracted to give
prompt notice; the failure to do so should in all justice be considered
\textit{prima facie} evidence of an action prejudicial to the interest of the
insured; if contrary to the indication of these considerations the con-
tact were honored and insurer funds used to pay a claimant the cost of
so doing would fall upon all insureds.

While the principle of liability insurance involves the many pay-
ing for the mistakes or misfortunes of the few, there is nothing in
this principle to indicate that the insured is to be relieved of all
duties toward the insurer (or in reality toward his fellow policy-
holders.

Questions of a related nature have been raised in regard to the
clauses requiring the assistance and cooperation of the insured. In
clauses which have remained essentially the same in later policy edi-
tions throughout the period of this study, the standard policy of 1925
provided that the assured should not, except at his own expense, vol-
untarily assume any liability, settle any claim, and should not inter-
fere in the negotiation of any settlement. Brainard gives a hypothet-
ic case in which an emotionally upset insured following an accident
states that he is at fault. Later it turned out that what the insured
thought was a minor case of property damage involved an allegedly ser-
ious bodily injury. Because an insured's statement may prejudice the
insurer's defense of the claim, insurance legal authorities have stated
that the insurer may deny coverage to the insured in such cases.
Appleman cites a number of cases dated from 1914 to 1933 related to
this point. However, none of them bear directly upon a case wherein
an insured might make an admission of fault or pay a claim and then try
to have the insurer defend against a claim or reimburse the insured. Though it is often stated that insurers evade claims by use of such so-called fine print, it seems quite clear that few if any cases of the particular type in question have come to the attention of insurance legal authorities and text writers. It is known by the writer from his agency experience that the insurers through printed instructions to the insured and verbally through their agents carefully warn the insured never to admit liability.

The over-riding consideration, of course, is that the insurer must be given the right to act in defense of its own funds; collusion and fraud could too easily have resulted if the insured were not compelled to refrain from admitting fault or attempting to control the claim settlement. The insurer had to be in a position to use its trained staff of agents, claimsmen, and attorneys in an unprejudiced way if the insurer was to be able to operate successfully.

A particular concern occurred in relation to the cooperation clauses whenever the amount in damages claimed exceeded the policy limits. In cases of this kind, the policy contract of 1925 specifically forbade the insured to "interfere in any negotiation for settlement." In the 1935 policy this wording was dropped but the broad requirement that the insured should "cooperate" and "assist in effecting settlements" was retained effectively forbidding interference. The practical effect of these clauses was to prevent the insured from bringing pressure to bear upon the insurer to make a settlement within the policy limits, e.g., a common limit was $5,000 per person. Since the insured himself would be required to pay the amount of the award in
excess of the policy limit, he might often be tempted to try to bring about a hurried smaller settlement rather than risking a defense which if lost could result in his own participation in the settlement.

This situation is related to the adequacy of policy limits discussed earlier but it also points out that settlement negotiations related to a claim in the event of insurance were intended to be entirely in the hands of the insurer. But the insurer also has been required in cases of claims or suits exceeding policy limits to cooperate with the insured. For example, it was required that the insured be given the opportunity to aid in his defense by hiring his own attorney if he so desired. The insured or his attorney were required to agree to any settlement in excess of the policy limit. The insurer had a special duty to keep the insured informed and to operate in the utmost good faith in defense of his interest. Cases have been recorded in which the insured was able to show to a court’s satisfaction that the insurer had not been as diligent in defense as it might have been. The result in some of these cases has been that the insurer and not the insured was required to pay the excess judgment. 13

Taking another of the policy conditions, the case of false statements or failure to disclose material facts first, it is to be noted that an insurance policy is a contract requiring utmost good faith. The applicant for insurance is required not only to be honest in his intentions and answers but to think carefully about such things as the intended uses of the vehicle, the usual places where it will be driven and garaged (that is, where it will be kept when not in use, as overnight), the description of the automobile, and those who will be
regular or occasional drivers of the vehicle. The applicant is also likely to be asked about the occupations of usual drivers, auto accidents, traffic violations, and past cancellations or refusals of insurance over a three or five year period proceeding the date of application. This too must be answered with care.

Omitting information of the above nature when requested by the company or its agents or false statements in answer to these questions, provided valid grounds for refusing to issue an insurance policy and for denial of coverage for a claim. An applicant for insurance might well expect that if he were to deliberately conceal information or misrepresent the facts that a refusal to insure might follow. However, the passage of time often dulls the memory and the denials of claims, based upon this misrepresentation, two to three years after the policy had been originally issued did often cause ill-feeling. Particularly this would be true whenever the misstatement or omission was one involving forgetfulness or a lack of knowledge about the other drivers on the part of the applicant, such as in the case of the occurrence of a slight accident or minor traffic violations involving family members.

A distinction should be drawn between the answers to questions asked on an application which were included in the policy when issued and answers which were not so included. As a rule, in this early period, insurers included in the declarations sections of the policy the statements felt to be of greatest significance in defining the characteristics of the risk which the insurer assumed. For example, the standard policy in use in 1925 stated that the company agreed to provide the insurance coverages in the policy in consideration of the
payment of the premium and of the statements made by the insured and contained in a schedule (the declarations) attached to the policy. This schedule or declarations included statements of the insured's occupation, the principal place of use and garaging of the automobile, a description of the vehicle, a statement that the vehicle would not be rented to others or used to carry passengers for a consideration, a statement that the insured did not use a trailer, that the insured was the owner of the vehicle, and that no insurance had been declined or cancelled by any company. It can be seen these specified conditions of use which the insured was expected to abide by on pain of voiding coverage. The policy also certified the acceptability of the insured's past driving record.\textsuperscript{14}

False statements of the insured contained in this schedule or declarations in most states provided possible grounds for denial of a claim. At law such statements might be considered warranties rather than simply representations. A very strict interpretation of warranty would have permitted the insurer to deny a claim whether or not false statements or concealments increased the risk of loss. Representations, those facts or opinions stated by the applicant but often not made a part of the policy itself, could not be used by the insurer to void a policy at the time of a claim unless it could be shown by the insurer that the representation were both false and increased the risk of loss. But insurance law was already well on its way by 1925 to achieving a special status which gave advantages to the insured and the public. Legislatures and courts whittled away the earlier harsh doctrine so that by 1936 a prominent authority on insurance law could state that a
breach of warranty did not nullify an insurance policy unless the breach materially increased the risk of loss. Another authority writing in 1938 insisted that in except a very few states, warranties actually held identical status with representations.

Apparently for its maximum protection, the insurer would have to include all statements of the insured in the policy itself. Unless such statements are included in the policy, they might have the status only of representations. This might have the effect of making it more difficult for the insurer to avoid coverage at the time of a claim. One authority advises "it is probably best for the layman to avoid technical distinctions between warranty and representation and to look upon the declarations as statements the falsity and materiality of which the insurer will probably have to prove if he is to avoid the contract in the face of a claim made by either the insured or a third party." "Declarations," as used in this statement, may at time include answers to questions asked by the insurer or its agent whether or not the answer is included in the policy itself. For example, one authority cites a case in which an insured was refused coverage for an accident after it was discovered that he had lied about previous driver's license revocations though this misstatement was not included in the policy.

From the insuring public's viewpoint, it is well to note also that a fraudulent misrepresentation may well be used to void the insurance policy even though it might have been immaterial to the risk assumed.
In actual practice, the companies have apparently quite rarely attempted to invoke the privilege of voiding a contract at the time of a claim whenever misrepresentations were discovered to have been involved. (A recognition perhaps of human frailty and the fear of state encroachment into insurance to defend this frailty.) Insurer investigations of the applicant's past record usually sufficed to discover serious misrepresentations as well as to reveal other characteristics of the insured usually not inquired about in the application which would mark him as an undesirable client. In this way insurers were able to reject the applicant or to cancel the policy at a time that would be less likely to be fraught with grave circumstances.

More broadly still the cancellation of an insurance policy, even though based on unintentional concealment or misrepresentation and even if not involving the coverage of an existing claim, was often a serious matter to the insured. As intimated above, a cancellation by one company could lead to the refusal of all companies to accept insurance for the ex-insured at standard rates or perhaps refusal to insure under any circumstances.

It was clearly evident that the institution of liability insurance, though it relieved the legally imposed financial worries and burdens of many automobile owners, was enormously complex. As increasing numbers of automobile injuries forced greater social attention upon that problem, the institution of liability insurance provided a vehicle through which society could exert its attention toward a solution. But the intricacies of the system were not well understood as has been shown and further social frictions flowed from the lack of
understanding as well as from a basic but generally vaguely realized dissatisfaction with the fault system itself. From this review of the requirements of the 1925 contract it can be seen that the legal knowledge and understanding demanded of the ordinary individual was extreme. Becoming accustomed to the involved policy and insurer procedures may be regarded as one problem related to society's adjustment to the automobile that is by no means a minor one. The simplicity and ease of operation involved in a compensation system when compared to the complexities of the liability system is a strong recommendation for the adoption of compensation. But a number of other facets of the liability must be examined before making a comparison with the compensation system.

Conditions in the policy, for example, included a limitation upon the amount of liability the insurer would assume. The minimum standard limit in 1925 was $5,000 per person injured or $10,000 for all persons injured in any one accident. Higher limits could be purchased and obviously were required in cases of serious injury or death particularly of a youthful to middle-aged person with dependents. The higher limits were not prohibitively expensive, for example, increasing the policy limits to $50,000 per person and $100,000 per accident increased the premium by 45 per cent and $100,000/$300,000 limits could be purchased at an increase of 53 per cent above minimum standard. By far the great majority of those purchasing insurance bought only the standard minimum limits. Insurers were reluctant to write policies granting coverage having high limits. Should the existence of high limits come to the attention of a jury hearing an injury case, it was felt that this
knowledge would tend to increase the amount of the award. Underwriters generally sought to avoid granting limits far in excess of the net financial worth of the client. To what extent this may have been relative to the auto insurance problem is unknown. However, the occasional underinsured cases would seem to indicate the need to explore the experience in other nations where unlimited liability policies have been written. Also the advisability of increasing minimum policy limits as has been done (but inadequately) in many states seems to need further consideration as does the possibility of placing a schedule of benefits into effect which would include maximums that could be awarded in any one case.

Another phase of insurer practice related to providing an attractive service at an acceptable price was that related to selection and retention of clients. One of the problems involved in having private insurance serve a public purpose of compensating for injuries was that connected with the reluctance of a great majority of automobile owners to purchase insurance. The complexities of the insurance policy and the intricacies of its conditions explained above doubtless contributed to the failure of the public to purchase insurance voluntarily. A strong determination on the part of public officials to make the ownership of liability universal was already becoming manifest by 1925. The system clearly would not function properly with only 20 per cent to 25 per cent of automobiles insured as was the case at that time. Obviously if insurers were to provide the chief means of compensating for auto accidents, they would be required to make insurance service available for all or nearly all automobiles on the highway.
It is of course impossible to state how many drivers were ignorant or careless about their responsibilities under the legal liability laws, how many were procrastinating in buying a product that they knew they needed, and how many took the position that there was really no need for the coverage and rejected it on the grounds of the traditional right to freedom and individual responsibility. At any rate only a rather small minority of drivers willingly bought liability insurance in the pre-World War II period.

Part of the reason for the reluctance to the voluntary purchase of insurance may have been related to ill-feelings created by insurers in rejecting or cancelling insurance for certain motorists. Insurers are often cast in the role of "nervous nellies" or as heartless and soulless corporations expecting an impossibly high standard of conduct from the insuring public. One authority on insurance law for example is quoted as stating that insurers "put into a policy all of the things that they would like the insured to do if he had the wings of Mercury and the wisdom of Ulysses. And when their job is finished it takes the patience of Job to find out what they have done." For example, members of the public already reluctant to part with money for a product with few or no ego-satisfying qualities, were likely to be less willing to risk a new blow to the ego by being rejected or cancelled by an insurer.

By 1925, insurers already commonly contracted with investigating companies to examine the personal background of applicants for insurance. In an article written by a representative of the Retail Credit Company in 1926 and corroborated by an insurance text of the same
period, insurers sought to avoid those with poor driving records and those whose activities, qualities, or reputations were objectionable to society generally. Accident records, a history of bad debts, excessive use of alcohol or narcotics, or a record of marital infidelity or frequent divorce are examples of items considered of importance to underwriters in the selection and retention of business. Rejection for or cancellation of insurance was often a traumatic experience for the applicant or insured. The insurer was often widely and publicly accused of being unfair and arbitrary and perhaps of character assassination based upon secret information which the insurer would rarely disclose for fear of a slander or libel suit.

Since this insurer action was carried out by a private and not a governmental body the rights of due process, e.g., to face one's accusers and give contrary evidence was not accorded to the applicant or insured. One can only speculate as to the effect of these selection practices on the auto insurance problem. Changes effected in the 1960's and others proposed show this to have become a major consideration to government officials and insurers.

The public was generally unaware of the connection between the reputation of an insured and the probable outcome of a trial in which negligence of the insured was in question. Even if the average member of the public fully understood the fault or negligence system, which was highly unlikely, he might not realize how moral, business, and social reputation might affect a court judgment. It was much easier for most members of the public to be critical of insurers for being too
selective in choosing insured than to analyze why one insured was likely to be more desirable as a client than another.

Insurers, of course, were required to analyze the quality of the insured from the point of view of defending this insured in a court trial in which negligence of that insured was the principal question to be decided. Juries were often required to determine who was telling the truth when two conflicting versions of an accident were presented by the insured and another driver. The party with the better appearance and reputation often had the advantage in having his story believed. Though jury members would doubtless have been loathe to admit its prejudices against certain racial or ethnic minorities or against divorced person or persons having certain occupations or against persons with certain physical disabilities. Particularly past accident or traffic violation, a record of bad debts, or other evidence of antisocial behavior were burdensome factors for an insurance attorney to overcome. Other factors being equal, lower awards or favorable verdicts were more likely to be rendered when the defendant had a generally superior reputation as defined above.

Insurers in attempting to be more certain of selecting the quality of insured who would be more likely to win favorable verdicts received the reputation of being "snoopy," puritanical, and often unpredictable and unreasonable in the selection and retention of business. Insurers were often reluctant to insure prominently wealthy individuals because they might become targets of large damage suits; one list included "college students, pugilists, and itinerants" among those who were likely to be poor risks. A record of belligerency especially in
regard to neighbors, employers, or governmental authority might bring a rejection. Insurers were also known to develop quotas for certain types of clients. Those of racial or ethnic minorities might be rejected because as a class these produced high losses. Certain occupational groups such as owners of bars, bartenders, dance hall operators, or traveling salesmen might be rejected as a group.

Eventually in the post-World War II period non-cancellable policies, assigned risk plans, special "sub-standard" rating plans, and pressure upon state officials to deny driver's licenses to chronically bad drivers were developed as means to overcome the undesirable features of rejection practices but these still did not fully satisfy the public's desires. The right of rejection of prospective clients is inherent in free enterprise unless the service offered is a public utility and the proper exercise of this right is certain at times to be called into question.

These have been examples of the frictions often involved in the operation of liability insurance systems. Each point of friction adds to the financial and social costs (e.g. irritations) of the liability system and forms a part of the auto insurance problem. Critics of the system have often pointed out many of these shortcomings and suggested some form of compensation to the injured without the necessity of engaging in attempted settlements through the fault system. The basic outlines of these suggestions were made in late 1920's and early 1930's. A survey of the respective arguments for liability and for compensation will now be presented.
Footnotes - Chapter VII


3 Calvin Brainard, Automobile Insurance (Homewood, Ill.: Richard D. Irwin, Inc., 1961), pp. 81-83.

4 Eugene F. Hord, History and Organization of Automobile Insurance (no place or date of publication listed; no publisher listed), pp. 10-11. This booklet contained material from its author's addresses before the Insurance Society of New York, November 11 and 18, 1919.

5 Crobaugh and Redding, Casualty Insurance, p. 355.


7 Ibid., pp. 29-33.

8 Brainard, Automobile Insurance, pp. 300-05; Kulp and Hall, Casualty Insurance, pp. 100-01.

9 Brainard, Automobile Insurance, p. 304.


11 Ibid., pp. 256-80.


13 Kulp and Hall, Casualty Insurance (1968), pp. 92-95.


By 1925 much of the public and its governmental leaders were becoming convinced that the voluntary purchase of insurance was not providing an adequate means for meeting the costs of automobile injuries. It seems certain that there would have been little problem in meeting the costs of insurance. The costs would have been within the reach of all auto owners. Insurers could readily have accommodated the demand. But it was also certain that in the absence of some compulsion the public would remain largely uninsured.

The greatest public demands in regard to insurance took the form of requiring that some means be found to provide a solvent defendant in the case of accidents where one party involved would be accused of negligence. But there were a number of concerned citizens who realized at least some of the inadequacies of choosing liability insurance as a compulsory approach. Liability insurance could satisfy the demand for a solvent defendant only by fastening a complex, costly, and irritating system upon the public. Certain concerned citizens wanted to go beyond a system that would provide payment to the injured only if the fault of another driver could be proven as well as to avoid the complexities of the liability system.
One of the foremost leaders of the movement in this direction was Judge Robert S. Marx of Cincinnati, Ohio. Judge Marx, writing in the National Municipal Review in 1927, noted that negligence law was inadequate since in many cases fault could not be fixed or proven and therefore many accident victims and their dependents would be unable to obtain payment for their losses. Marx suggested that a fund be created wherein every auto accident victim except those "where injury is self-inflicted or arises from willful violation of law" would be paid. Death benefits, medical expenses, and loss of income would have been compensable for all auto accident victims under the Marx plan. An assessment of fifteen dollars per automobile, Marx stated, could provide sufficient funds for a death benefit of $6,500 per person killed, pay all medical expense, and provide $4 per day disability income to adults and $2 per day for children. Such a fund could be provided through either private insurers, a monopolistic state fund, or through a combination of private and public plans.¹

The arguments cited for the Marx plan included elimination of the uncertainty and wastefulness of liability proceedings. Judge Marx stated that because accidents often occurred within a split second it was impossible in many cases to ascertain fault. This circumstance often resulted in a jury trial and was a pure gamble both as to liability and to damages. Juries were prone, contrary to law, to follow the procedure of allotting partial benefits when some contributory negligence on the part of the victim was involved creating further uncertainty for all involved. The liability system was said to largely to the profit of insurance companies and to attorneys
specializing in personal injury claims. Compulsory liability insurance would add to the flood of personal injury cases already clogging the courts.

Marx summarized his arguments by observing that the compensation plan would be beneficial to the victim, the auto owner, and the general public. Benefits would be awarded on the basis of a schedule without regard to fault rather than requiring an adversary proceeding. Approximately 90 per cent of the premium paid would go to compensate the injured as opposed to the approximately 35 per cent under liability insurance (about 65 per cent of premiums paid under the liability system went to pay commissions, overhead, administration, and the cost of investigating and defending against claims). The public would benefit by a three-fourths reduction in the time judges and juries spent in hearing and deciding personal injury claims. The total cost of caring for accident victims would be reduced. The operators of automobiles rather than public and private charities would pay the costs of caring for uncompensated victims. Social dislocations would be greatly reduced. Marx closed his argument by maintaining that the chief advantage would be that society would be enabled to control accident prevention "and scientifically to eradicate the causes of accidents."

Writing in the University of Pennsylvania Law Review in April of 1928, Wayland H. Elsbree and Harold Cooper Roberts urged a compensation plan containing the same essential features as those proposed by Judge Marx. Of particular concern to Elsbree and Roberts was the application of the "prudent man" theory to the compensation or non-compensation of auto accident victims. The concern of these writers was that the
"reasonably prudent man" was a "purely fictitious fellow" requiring that "an artificial standard of conduct," often arbitrary and unrealistic be imposed. It tended to seek someone to blame in every accident. In actual fact, Elsbree and Roberts contended, in more cases than not "circumstances beyond the control of both parties are the real causes of accidents." These writers contended that those involved, or even impartial eye witnesses, did not know what really happened. "All too frequently it happens that the only evidence which might establish negligence lies buried with the victim."²

Marx, Elsbree, and Roberts made it clear that only if it could be established that driver error alone produced an injury accident could liability be legitimately fixed. They intimated that the public would be vastly disappointed in the small number of victims compensated under the liability system. For example, the condition of the vehicle and the environment might excuse the driver whose automobile went out of control and became involved in an accident. Relatively few accidents involved obviously flagrant and anti-social behavior on the part of a single driver. A momentary lapse of attention and care was often required to be proven in order to fix negligence. Obviously this was a difficult if not impossible task. While some attorneys who specialized in dramatic showmanship and emotional pleadings before the juries defended the adversary system as conducive to developing all the facts. There were many responsible men of the law, such as those just mentioned, who argued against the futility of the fault system and the abuses which attended it.
Some popular magazines such as *The New Republic* and *Collier's* also sought in articles and editorials to advance the cause of compulsory compensation for all accident victims. Both sought in the late 1920's to go beyond the "half-way measures" of proposed financial responsibility laws and compulsory liability insurance. They cited delays, uncertainties, injustice, jury capriciousness, the problem of contributory negligence, the expense of attorneys, and the inhumanity of the placing of blame ahead of the suffering of victims. Comparing the highways to the dangerous factories and mines of the pre-workmen's compensations days, *Colliers* drew a correlation between the safety gains in factories and what might be attained on the highways. *Colliers* cited a long study made by Charles Evans Hughes, Henry Taft, and Justice Victor Dowling, and "other eminent jurists," to determine the cause of court congestion. The blame was placed squarely upon the vast number of automobile accident cases. The article indicated that adoption of compensation coverage was imminent in New York state and perhaps in others. Calling for retention of the fault principle in cases where the driver was "flagrantly and indisputable" at fault, *Colliers* urged a system that would pay first and blame afterward.³

But compensation plans were beaten back by stubborn opposition. Insurers, journalists, and attorneys argued against the "nurse" theory of government. W. P. Barnum and R. R. Stephenson, Youngstown, Ohio attorneys, argued that workmen's compensation and auto compensation could not be shown to be analogous. Accident control in industry had emerged because of the employer's control of the premises where accidents might occur and because of the contractual relationship between
the employer and employee. The employer could enforce safety condition
the improvement of which would be obtained through inspection and sug-
gestion of an insurer. Control of this kind could not be implemented
in the use of an automobile. Barnum and Stephenson argued that the
ownership of an auto might better be equated to the ownership of fire-
arms. Why not require all gun owners to buy compensation coverage?
Obviously the public would not accept universal coverage for every con-
ceivable accident, why single out the automobile? These writers also
felt that no just and reasonable schedule of benefits could be devised
that would be fair to wage-earner, housewife, and child alike.  

Insurance executive Henry Swift Ives wrote and spoke often for
insurers in this period. Ignoring Marx's points to the contrary, he
pointed out the injustice of paying claims out of a fund created mostly
by careful persons to reckless, careless, and intoxicated persons in-
jured by their own misdeeds. Ives underscored the possibilities of
fraud which the Marx "pork-barrel" plan would create. Ives imagined a
great army of investigators checking accidents all over the United
States. Thinking to label the plan as completely ridiculous, he argued
that auto accidents should not be singled out for special treatment:
"the state might just as well underwrite accident and health insurance
for all its citizens."  

In vitriolic terms Ives expressed himself as in favor of a mini-
mum of compulsion by government. Government he said had no more busi-
ness entering the insurance business than the grocery business. Largely
setting up a straw man, Ives said that the effort to socialize insur-
ance was "the greatest menace to the institution of private property,
the most invidious assault on private rights, and the most far reaching invasion of personal liberty ever proposed in this country." He inferred that if insurance were handed over to government that all individual liberty would be swallowed up in a mass confiscation of individual liberty.

Edson S. Lott, President of United States Casualty Company in 1929 attacked the compensation plan as "half-baked." He called upon the public to reject these ideas because they were not sufficiently specific. The plans claimed much but avoided criticism because of their indefiniteness. Unanswered questions, he said, included: Would liability insurance still be necessary? Would an option still exist to bring suit alleging negligence? Would costs vary for rural and urban people? How would previous contributing disabilities be handled? Who would be responsible for checking up on the progress of the disabled? Lott concluded his argument by insisting that to require all motorists to insure was "basically unsound." Careful drivers should not be "lumped in" with the "careless and criminal" in an insurance scheme that put on the careful the burden of losses caused by those not so. Ives and Lott both urged that insurers would be harmed by being required to insure all comers; this would be "financially unsound and harmful to society." 

This onslaught, couched largely in terms of preserving the priority rights of private enterprise, was successful in overcoming the forces proposing compulsory compensation for auto accidents. But compulsion in some other form was widely considered essential. The remaining debate was focused upon whether liability insurance should be
made compulsory for all automobile owners or whether some less coercive plan would be more acceptable.

The arguments urging compulsory liability insurance concentrated on the needs of uncompensated accident victims as did the arguments for a compensation plan. However, the proponents of liability insurance spoke primarily in terms of the irresponsibility of the auto owners who had little means to pay for injuries they might cause to others and who had neglected or refused to buy insurance. This is perhaps evidence that the automobile had in earlier years been the plaything of the rich who could afford to pay for damages they caused. In more recent years it had become nearly universally owned and now many owners could not afford to meet possible judgments that might be rendered against them. Also, the arguments reveal that the proponents of compulsory liability insurance felt that a small percentage of all automobile owners were chronically at fault and caused almost all accidents. This latter proposition soon led to adopting a system that was specifically designed to curb this chronically "reckless or incompetent" group of drivers.

Those proposing compulsory liability insurance took note of similar European laws particularly a Danish law which had been enacted in 1918. The Massachusetts law passed in 1925 drew largely upon the Danish action. The literature reviewed for the early years of this study was almost entirely based upon reactions to the passage and early operation of the Massachusetts compulsory liability law. Insurance professor C. A. Kulp is quoted as stated in Casualty Insurance (published probably about 1927) that legislation of the Massachusetts type had
been introduced in 38 state legislatures and that there was little
doubt that "compulsory laws of one kind or another will be passed in
many other states." He noted that there was general agreement on the
need for legislation but prophetically of the next forty years that the
"precise kind of law which will best serve the purpose" was yet to be
determined.

The claims made for compulsory liability insurance was summarized
by Professor Edison Bowers in the following fashion:

III. The advantages of compulsory automobile liability
insurance warrant its adoption; for
A. It will ultimately lessen the number of automo-
bile accidents, thus striking at the source of
the problem; for
1. By making an insurance policy a prerequisite
to obtain a license the state can deprive
the reckless operator of the right to drive;
for
a. Concurrent with the issuance of a policy
that will be the requirement that all acci-
cidents be reported, their causes inves-
tigated and their fault determined. Such
data would show who were the careless
drivers and would result in the suspend-
ing of their insurance policies, or pre-
vent the renewal, thus freeing the high-
ways of the incompetent driver.
B. It will guarantee the financial security of every
automobile owner, thus increasing the number of
instances in which the injured person or his de-
pendants may receive financial remuneration; for
1. Whenever the injured person secures a court
award he is certain that it will be collected
within the limits of the insurance policy
held by the motorist. Insurance would place
the financially worthless motorist on the
same plane with the financially responsible
motorist.
2. Many claims will be settled out of court be-
cause insurance companies know from exper-
rience that it is often better to pay a claim
than to go to the expense of a court trial.
When this is the case, those affected by the
injury will receive financial assistance with
a minimum of delay and expense. The community will also benefit because it will avoid the expense and inconvenience of a law-suit and the courts will be relieved of much congestion.

C. It is good business policy from the standpoint of the automobile owner; for
1. It will lessen the average cost of insurance; for
   a. The probable increased number of claims for damages will be balanced by the decreased number of accidents.
   b. The majority of uninsured motorists live in rural districts where the accident hazard is slight as compared with those of the city. This lesser hazard will be reflected in smaller premium rates.
   c. Compulsory insurance will increase the business of the insurance companies by nearly 400 per cent. Since the insurance business is of the decreasing cost type, any considerable increase in the amount of business will result in lower costs.
   d. Since the state will regulate the rates no excess profits will go to any company but will be shared by the motorists through lower premium rates.

2. If it is good business policy for a part of the automobile owners to carry insurance it is good business policy for all of them to carry insurance. Every argument that has ever been made by an insurance salesman applies with as much force to the great number of uninsured motorists as it does to the relatively small number of insured motorists; for
   a. Those who now carry insurance thereby relieve themselves of the possibility of being called upon to pay a court award, arising out of an accident in which they may be judged to be at fault. If they are property owners, they are assured that they will not lose a part or all of their holdings, while non-property owners are assured that a judgment will not "hang over their heads," to annoy and to harass them for years to come.
   b. Those who do not now carry insurance face the same contingencies as those who do carry insurance. The latter have eliminated the effects of these contingencies by displaying a little foresight through paying a certain small annual premium which eliminates the
possibility of having a part or all of their wealth taken away from them by a court judgment.

c. Since it is generally recognized that the motorists now insured represent foresighted citizens, the state will be performing a valuable service in forcing the short-sighted to enjoy the same protection as their more provident brothers.

The arguments represented primarily a composite of the views of insurance executives Edson S. Lott and Henry Swift Ives. Other spokesmen for the insurance industry were joined by writers representing the United States Chamber of Commerce and by still other writers representing the business community. The members of the opposition expressed a fear of government encroachment into the sphere of private enterprise in general and into the insurance field in particular.

Professor Bowers concluded his review of compulsory auto insurance plans by considering a number of compromise proposals. These included principally a review of proposals for financial responsibility laws the most representative of which were the plans suggested in 1926 by Edward C. Stone of the Employers Liability Assurance Corporation and one by the American Automobile Association. These plans, which helped to focus the attention of the nation on a more agreeable alternative than completely compulsory liability insurance or compensation, will be examined presently. It may be noted somewhat parenthetically but significantly that the last four articles summarized by Professor Bowers involved approaches designed to give primary emphasis to safety. These included a proposal similar to the Stone Plan suggested by the American Automobile Association (mentioned above), and labeled a safety-responsibility bill, plus three other articles concerning promoting the
licensing of all drivers by state authorities. One of these in its title, "Weeding Out the Worthless Driver," revealed again the public emphasis on the few drivers supposedly responsible for almost all accidents.

Best's Insurance News reprinted in 1927 a speech alluded to above by insurance executive Edward C. Stone in which the probable success of compulsion in insurance was compared to the problems being experienced in regard to liquor prohibition. Calling for "less government in business and more business in government," Stone found much the same faults with compulsion whether it concerned compensation or liability insurance. Stone held that in actuality the workmen's compensation plans had only been constitutional and acceptable when they were made to contain the voluntary principle. Certain legal defenses had been taken away from the employer unless he voluntarily purchased workmen's compensation. The "Stone Plan" proved to be the genesis of one of the earliest financial responsibility laws. Its essentials were first adopted in New Hampshire in this period. The basic framework of this law has already been examined earlier in this study. The reader will recall that compulsion did not enter the picture until one "at fault" accident had already occurred. If a court found that a motorist had been liable for an accident and rendered a judgment for damages against him, the motorist was required to pay the judgment or face the cancellation of the registration of his automobile.

The Stone Plan assured that freedom to insure or not to insure was retained by the motorist. The insurer retained the right to accept or reject an applicant for insurance. However, in order to retain his
driving privileges the motorist had to avoid at fault accidents or to insure. Since insurers would not issue or retain insurance for a reckless, careless, or incompetent operator, safety would be promoted. Thus it was felt that most all motorists would do the easy thing, that is, purchase insurance. Those motorists who chronically caused accidents would soon be identified and removed from the highways either through inability or unwillingness to meet the costs of judgments rendered against them or through correction of their faults.

The major problems in regard to this plan centered around the facts that neither the vehicle death rate nor the compensation rate for victims showed significant improvement after its enactment. The death rate (injury rates were unavailable) from motor vehicle accidents when comparing the indices discussed in the section on auto safety measures remained just about the same or perhaps worsened slightly when the statistics for the period 1933-1937 (after most states had enacted financial responsibility laws) were compared with the 1928-1932 period (before the majority of states had put the law into effect). The vast majority of motorists continued to avoid the purchase of automobile liability insurance. Careful studies later revealed that the great majority of motorists continued to avoid the purchase of automobile liability insurance. Careful studies later revealed that the great majority of accidents were not caused by accident repeaters but by persons having his first and perhaps only "at fault" accident of his driving lifetime. Also it was discovered that few accident victims would go to the time, trouble, and expense of a law suit against an alleged "at fault" driver because of the uncertainties of a favorable
judgment and the further uncertainty of being able to collect such a judgment once favorably rendered.

Many motorists, especially in the depression years, unable to meet the cost of a high judgment rendered against them, would voluntarily give up their rights to use the highways rather than submit to a long drawn out payment plan (assuming that this could be worked out). Motorists could also move out of state and frequently escape penalties in this way. Knowing this, victims rarely pursued their rightful claims to a judgment. In this case the offender continued to operate his vehicle again without insurance and the law remained a "dead letter." No studies of insurer practices in regard to refusals to insure or policy cancellations were found for this early period but later studies revealed that insurers refused or cancelled far less than 10 per cent of the insurance applicants or policyholders so that this factor seems to have been insignificant in the overall picture.10

While the public image of insurers, as indicated in earlier discussion, may have been less than desirable, it seems that this too played little part in the failure of motorists to insure. The fact that nationally about two out of three motorists remained uninsured up until the 1940's seems largely due to the reluctance of motorists to assume the extra cost of providing against the eventuality of being faced with a judgment. The act of insuring against one's being at fault in an accident doubtless seemed to be an admission of possible incompetence in operating a vehicle, something that few drivers wished to admit. Greater compulsion or "encouragement" was eventually
recognized as being necessary since most motorists would neither insure nor make other financial provisions to meet the possible costs of being liable in an auto accident.

There were a number of predictions in the 1920's that insurers would abandon their opposition to absolute compulsion in regard to accidents. For example, The Nation editorialized that the "only effective protest" against liability insurance came from the insurers which were inspired by their fear of state insurance. That writer expected the insurers to reverse their position as experience was gained under the Massachusetts law. Insurers would soon abandon their arguments that compulsory insurance would be harmful to safety and their "cheap talk about paternalism." Insurers in the interest of keeping claim payments low, and the general public in the interest of keeping rates low, would demand "careful licensing of the driver." After all, The Nation noted, insurers had at first bitterly opposed workmen's compensation but then had reversed themselves, campaigning for its adoption in the states that had been late in developing it.  

Professor Kulp, mentioned above, joined others in recommending watchful waiting. He maintained that a scarcity of statistical information prevented any definitive judgment as to choosing the best plan for the indemnification of victims. Kulp maintained that "simply to ascertain whether the plan works in Massachusetts would necessitate at least five years waiting, so slowly do notices of accident mature into claims, claims into settlements or suits, contested suits into final claim payments."
The nation, however, steadily removed away from compensation and from strictly compulsory laws. The insurers, noting a greater increase in the number of claims presented and the difficulties of getting the required state approval of adequate rates rejected the Massachusetts action and other strictly compulsory schemes in favor of the "encouragement" approach incorporated in the Stone Plan and the AAA plan. However, for a number of reasons already noted and despite the efforts of public officials and insurers the great majority of auto owners did not purchase auto insurance and the problem of the insolvent defendant remained much in the public mind. This became complicated by the fact that the expectation of an acceptable solution to the auto accident problem, including its financial consequences for victims, was not being met by liability insurance.

It is of course conjecture to state that liability insurance could under different circumstances have sufficiently solved the problem of meeting the costs of auto accident injuries. But it can be said that it did not achieve this objective in the years from 1925-1946. The relatively small percentage of purchasers was part of the reason but probably the chief reason for its failure to satisfy the public was the inflated expectations that the public held for the system. There is much reason to believe that the public felt that liability insurance was actually compensation insurance. There is every reason to believe that somehow or another the public wanted liability insurance to serve the purpose of compensation coverage very much as Judge Marx had outlined its purposes in 1926.
Though on the one hand believing in the fault principle, the public found that doctrine to be too rigid and heartless where individual victims were concerned. The public apparently was unwilling to completely abandon negligence or fault laws, but in fact, it often made a mockery and legal fiction of them. It must be kept in mind that throughout the period of this study, the public as a whole, as shown in its laws, did not want payment made to all victims of automobile accidents under liability insurance coverages. The official policy of society was always and everywhere that the victim should bear his own expenses unless he could show that someone else's negligent act or failure to act was the exclusive cause of his injury. But unofficial policy, especially as expressed through jury verdicts, indicated that the public wished to award settlements in a great number of cases where the liability laws and the facts of the case indicated otherwise. The public's failure fully to understand and accept the fault system and the operation of liability insurance indicated by it produced enormous difficulties for insurers. An unstable situation developed which forced insurers to find ways to make the liability system more and more palatable to the public in order to survive.

Insurers argued that by and large members of the public should be prepared in any eventuality to meet the costs attending the use of the automobile. In other words, the public should buy accident insurance which would be a two-party (insurer and insured) insurance contract and which would always be available to pay benefits regardless of fault. However, in cases where careless operation of a motor vehicle caused
injuries to others, the careless operator should be made responsible for the costs. This would mean the largest possible market for insurers since all members of the driving public would be prospective buyers of accident insurance (two-party coverage) and liability insurance (three-party coverage).

Insurers then have taken the law as they found it. They have attempted to work within the stated principles of common and statute law whenever possible and to convince the public and its government that it is plausible, just, and conducive to the best interests of the public. This writer has not attempted to judge whether the negligence principle, or fault law, is either in the interest of the public or detrimental to it. An interesting study is, however, suggested that would be based on measuring the influence of insurers on certain state legislatures and perhaps also on the United States Congress. The question to be studied would revolve around whether insurers have successfully prevented a full exploration of the issues surrounding fault law. In other words, it would examine the influence of insurers as a lobby group in seeking to prevent a thorough inquiry into this subject. However, interesting as this proposition may be, it is considered to be beyond the scope of this paper.

The insurer position was then that the careless or negligent motor vehicle operator should be responsible for the cost of the injuries he caused. It has been noted that the number of cases in which this can be clearly determined is highly questionable. Estimates have been made which indicate that in perhaps only 30 to 40 per cent of all accidents can fault be fixed solely upon one driver. In the other 60 to 70 per
cent of the accidents both drivers contribute to the accident or the facts are so much in dispute that fault cannot be fixed with any degree of accuracy. Also it is to be noted that few persons carried adequate two-party insurance. This was more true in the early years of this study than in the later years as various forms of social insurance, group accident and health insurance, and increased private individual insurance have become more widely distributed.

But when one compares the various components of the awards made to accident victims and dependents, the enormity of two-party insurance needs becomes apparent. These components include loss of income to the insured and his dependents, and this conceivably could be an enormous amount whenever one calculates forty years or more at the rate of income being earned at the time of the accident or reasonably to be anticipated in the future; it could include medical bills amounting perhaps to thousands of dollars, and payment for pain and suffering associated with bodily or psychic injury, disfigurement, maiming, or dismemberment which again may not unusually amount to many thousands of dollars. The ownership of two-party insurance providing these coverages is rare because it would be very costly and because insurers do not generally offer all of the possible benefits that might be desirable. This, of course, has meant that enormous pressures exist to file against and collect liability insurance since this is the only avenue open for full and complete compensation. It has also meant that the entire public has taken an extreme interest in policy coverages, and underwriting, rating, and claims practices as liability approached nearer to becoming a public utility.
Insurers then have been forced to find means to incorporate provisions in their policies which, in order to please one segment of the public demand, would result in a greater percentage of victims being paid. At the same time insurers have had to avoid being so generous to victims that their rates would become so excessive that the public as a whole would turn to state-operated insurance.

In this framework then the policy changes, and the rating and claims practices of insurers which were introduced will be examined. The insurers desired to create a more attractive product both from the point of view of a natural desire to increase sales but also from the point of view of escaping further government encroachment into the industry.

Despite the efforts of insurers to simplify and shorten the insurance contract, the policy has grown longer and more complicated since the 1925 version. Again liability insurance appeared to reflect the complex and demanding requirements of the automobile upon American society. Part of the increased length has been due to additional coverages being added to the policy which has necessitated placing separate exclusions sections in the various coverage explanation parts of the policy. However, the basic liability coverage exclusions after certain deletions and additions have enlarged. The exclusions in the 1925 bodily injury liability portion of the policy were few and simple. The policy did not cover: (1) the liability of the assured in the events of injuries to any employee, except a domestic servant, while engaged in the duties of his employment; (2) liability to a domestic
servant when operating, maintaining, or repairing the automobile; (3) obligations under a workmen's compensation law; (4) injuries caused by any person under the legally fixed age limit or under age sixteen operating the automobile and; (5) injuries caused while the automobile was towing any trailer or other vehicle or while the vehicle was being operated in any race or competitive speed contest.

Exclusions (1) and (2) above recognized the special status of those employed by the insured. Employer-employee situations demanded special care on the part of the employer and were likely to involve greater risk of valid claims being presented against the employer. Employer liability insurance or workmen's compensation coverage were available for these situations. To allow such risks to be covered by the auto policy would in some cases duplicate coverage required by law and in other cases result in claims costs not anticipated in the usual operation of a private passenger automobile. It could be argued that to include employees would result in unfairly increasing the costs to other insureds unless some method were devised for charging extra premiums to employers desiring this coverage. In excluding coverage, however, the insurers took on the obligation of making this very clear to the insured. Especially in the case of some business or professional men, dissension might occur between insured and insurer.

Insurers might have avoided occasional ill-feeling by pointedly asking about such situations on the insurance application, however, this was as a general practice not done. Insurance agents taking the applications sometimes specifically pointed out this exclusion. With only slightly modified wording, however, these exclusions were retained
in later revisions of the policy. The intent and practice of insurers of excluding this coverage has been made clear to the courts and the insuring public by its consistent retention and continuation in the policy.

The provisions pertaining to age limit were revised to exclude those below age fourteen in the 1935 policy revision. But in line with advice of one expert, E. W. Sawyer, to eliminate policy provisions which served no purpose other than to aid in the elimination of the class of risks that the company wished to avoid, this exclusion was dropped in 1941. This is cited by some insurance writers as a voluntary liberalizing of insurance coverage, but it is to be recognized that state governments had already under financial responsibility laws required the insurer to abandon use of this defense in its dealings with any injured third party. Therefore, this instance may also be cited as evidence that insurers were anxious to forestall other state actions forcing the extension of coverage. Insurers as a result of removing exclusions placed more reliance on the judgment of the insured which in turn would perhaps indicate the need for more careful client selection and retention practices. (Post World War II policies have not revived the age exclusion clause despite the arrival of chronically high loss ratios.)

The exclusion clause pertaining to the towing of trailers or other vehicles and operation in any race or competitive speed test was modified in the 1935 contract. The towing of a trailer insured for bodily injury liability with the same insurer as that covering the
automobile was no longer excluded. This broadened coverage but re-
quired that the trailer be specifically declared and insured before
coverage would be granted. By 1939, coverage had been extended in the
standard policy for liability arising out of towing of a trailer pro-
vided that trailer were of the "general utility private passenger"
type, not including trailer homes but including camping trailers. By
1966, the wording was revised so that any trailer "designed for use
with a private passenger vehicle" was covered.

In the matter of excluding operation of the vehicle in a race or
competitive speed test, by 1935 the wording had come to exclude cov-
erage only when such a contest were "prearranged." Doubtless many dis-
putes were eliminated by this change since presumably claims adjusters
would have been required to investigate very carefully every case where
such contest might have been suspected. By 1941 the clause had been
completely eliminated. Again the insurers were, for the benefit of the
general public and their standing with state legislatures, broadening
the coverage offered, and relying more on the character and judgment of
the insured. This placed more pressure upon agents and underwriters
in the selection and retention of clientele.

On balance it seems that the liberal modifications in the exclu-
sions were wise ones. Underwriting through the policy terms, that is
seeking to avoid claims by insertion of limiting conditions, was, from
a public relations standpoint, detrimental to the interests of the in-
surer. And though the liberalization increased premiums and put some
selectivity strains on the industry, these changes would seem to have
placed the burden of control and judgment on increasingly insurance-educated client rather than upon innocent victims. The industry was making adjustments that would seem to have been demanded by society sooner or later. Many insurance text writers believe that the additional coverages, liberalization of existing coverages by limiting exclusions, together with growing two-party accident, health and life insurance and relatively slight modifications of the fault system have enabled the private auto insurance system to be retained much longer than it would otherwise have been retained.

Up to this point in referring to the 1925 insurance policy, the phrase "standard policy" has been used. In so doing the writer has relied on insurance texts and journal articles written in the 1920's which use this term and particularly upon one text which printed a policy so labeled in its entirety. Much more accurately, however, the first standard policy was adopted in 1955 and became effective January 1, 1956. This has been referred to as "the 1935 revision." E. W. Sawyer, writing in 1956, stated that it was estimated that 75 per cent of the automobile liability insurance in force at that time was being written on the standard form adopted in 1935. As Sawyer pointed out, though the policies in use until and through 1935 contained little difference in the protection afforded policyholders, no two companies used identical language in the policies.¹⁴

The slight differences in policy language between companies did create problems which became more pressing as the number of automobiles in use increased. The first overt political action as a response to these problems was taken in West Virginia in 1934. There a state law
was enacted which required the use of a standard automobile insurance policy. In West Virginia, as in other states, the state insurance department was charged with the duty of approving policy contracts. With several dozen companies each filing a policy with variations in coverage and method of expression the state regulatory officials faced a tremendous task. This was felt to be an unreasonable and unnecessary burden which could be relieved by having only one policy.

Insurers reacted to West Virginia's action by urging their own organizations to study the problem with an eye to achieving standardization within the industry in preference to having it imposed from outside. Other considerations besides the interests of avoiding the certain inflexibility of a standard state government originated policy were important. It was evident, for example, that the joint rate-making process was not entirely accurate when policies differed even though that difference were small. Competition for the sale of insurance had often come to turn on slight differences in the policies. As an illustration, one firm might agree "to pay all sums for which the insured shall become legally obligated to pay," another might use the term "to insure the assured against all sums ---"; while another might replace "to insure" with "to indemnify." While all companies long before 1934 actually paid the claimant directly, sales agents could point to the difference in wording and to earlier court decisions in which "to indemnify" meant that the insured could only present a valid claim to his insurer after he had been judged liable in a court of law. This type of argument placed competition between companies upon the basis of
the cleverness of the agent and not upon the strength, reliability, or careful management of the insurer.

In other ways practices of various insurers in policy wording caused confusion among the public. Some companies extended coverage to others while using the insured automobile only with the direct permission of the insured. Others as shown above permitted other adult members in the household to grant permission for use of the automobile without voiding the insurance. Some companies offered to pay premiums on attachment bonds and on judgments without reference to policy limits. Some used words in the "omnibus" clause to state that coverage for other drivers applied while the borrower was "legally using" the automobile. In the latter case companies which omitted this phrase could attack their competitors by claiming that, for anyone who borrowed the automobile and had an accident in which he (the borrower) had broken a law, e.g., exceeded the speed limit, the insurance coverage could be denied.15

For a number of years there had been some agitation among insurers to eliminate deceptive and unfair contract wording advantages by developing a truly standard policy. But many companies opposed this movement stating that standardization would arrest the further development of auto liability insurance. Other insurers favored standardization but only in such a way as would prevent a fixation of form. With the threat of perhaps dozens of differing forms being developed as "standard" policies throughout the United States, the insurers decided that the time for action had arrived.
Commentary has already been made upon certain of the more significant changes that occurred in the policy contract. Significantly, the National Bureau of Casualty and Surety Underwriters, representing most stock company insurers and the American Mutual Alliance, representing most mutual insurers cooperated in developing this policy. This cooperation was of note because a spirit of antagonism had developed between the groups in which stock insurers were accused of charging unnecessarily high rates and mutual insurers were accused of cutting the quality of coverage and service in order to lower prices.

The closing of the ranks of insurers in this instance represented only one of several occasions when these opposing groups acted together to ward off threats to the industry. More will be said later of the rivalry not only between stock and mutual organizations but also about "independent" insurers who operated outside of these insurer associations. With this cooperation further action by state legislatures to adopt legislated standard policies was halted. The insurers went on to set up machinery for future revisions. However, in the post-World War II years deviations from the standard policy again proliferated. These will be examined briefly at a later point, but it should be noted here that the 1935 action set a minimum "standard" coverage, the insurers who used different wording were under a definite burden in showing that the non-standard language was also agreeable.

The adoption of the 1935 standard policy served to clarify the insurance coverages available to the public because of the educational efforts made coincident with its introduction. In connection with its acceptance by the industry and by the state governments, two important
book-length studies relative to the understanding its use and meaning appeared. Both of these studies written by attorneys expert in insurance matters have been referred to above (Sawyer and Appleman). Insurance texts and journal articles have praised these books for their contributions to the increased understanding of insurance by insurance personnel and through them by the general public. It seems certain that the new policy and the efforts to have it accepted by regulatory authorities and the public were significant in retaining and enhancing the standing of private insurance. For those who advocated continuation of the fault system for handling of auto injuries and the avoidance of further involvement of government in auto insurance, these developments were recognized as quite important.

In some ways the 1935 standard policy was more restrictive in coverage than the older policy described earlier. The section entitled "Additional Insured" was deleted and the definition of "insured" permitted coverage only to those using the vehicle with the permission of the person named as insured in the policy; resident adults even the spouse of the insured unless named specifically as insureds could no longer grant permission for use without consent of the insured and have the insurance continue to the user. A specific exclusion was added in which coverage was invalidated while "the automobile is used in the business of demonstrating or testing, or as a public or livery conveyance, or for carrying persons for a consideration, or while rented under contract or leased, unless such use "were to be declared in the policy" and a special premium were charged."
Another exclusion not previously mentioned referred to a denial of coverage for liability assumed by the insured under a contract or agreement. This protected the insurer from the action of an insured who might agree to assume the liability of another as, for example, might occur in a business arrangement. The policy also excluded coverage for any accident occurring after disposal of the interest of the insured in the automobile unless the written content of the company were first obtained. This clause clarified the intent of the company to be that of insuring both the person and the vehicle and not the vehicle separately.

These exclusions, of course, meant that injured persons might well be uncompensated as a result of having no solvent defendant available for suit. But it was becoming evident that certain situations would arise which would be very unusual or in which the insured would have no real interest in having to assume liability. The insurer either declared that these situations must be anticipated and provided for in advance or left outside the coverage of the policy. The reasoning followed was that the balance of the policyholders should not assume those risks identifiable as very unusual and possibly costly.

The insurer also made more clear its expectation that the insured would use care and judgment in controlling the use of the vehicle. These changes and certain broadening of coverages in the 1935 policy indicates that the expanding uses of the automobile and the increasing importance of insurance were making increasing demands on the talents of underwriters and others responsible for policy content. Automatic coverage was included for newly acquired vehicles, provided the insurer
were notified with ten days after purchase. This was true either for a replacement vehicle for the insured vehicle or for additional vehicles; this was if the insurer provided insurance for all other vehicles owned by the insured. The financial responsibility clauses creating the absolute liability for the insurer mentioned earlier were also included in the 1935 policy. By 1941, insurers feeling some small compensation for all persons including family members and guests in an insured automobile should be automatic, offered a new optimal coverage in conjunction with liability insurance. This coverage called medical payments was an attempt to increase two-party coverage. It provided that regardless of liability, all persons injured in an insured vehicle would be eligible to receive payment for medical bills or in the event of death funeral costs up to a limited amount which usually varied from $500 to $2,000. This foreshadowed a number of later attempts to use a tie-in sale to overcome public pressures for more certain compensation.

It would seem appropriate to mention at this point that common law practices in regard to disallowing the payment of insurance claims in cases of action contrary to public policy protected the funds of insurers and policyholders throughout the period of this study. For example, liability insurance did not apply in case of the car's being stolen and while being driven by the thief. The insurer was not permitted to pay a claim when the vehicle was involved in an accident while being used in the commission of a felony. These exclusions were not stated in the policy but applied by courts as a matter of public policy. This has rarely been a disputable question. However, an area
of dispute has arisen on a related question. This concerns the basic insuring agreement having to do with the insurer's agreement to pay sums for which the insured became legally obligated to pay because of bodily injury to others. The pre-World War II standard policies placed a modifying clause after this agreement. The 1925 policy discussed above, for example, used the limiting phrase "accidentally suffered" while the 1935 standard policy used the phrase "caused by accident."

John A. Appleman's discussion of this limitation revolved around the meaning of the word "accident" as found in various court decisions. 17

Appleman pointed out that injuries caused intentionally to others would be excluded from coverage as a matter of public policy. However, he pointed out that willful and wanton acts which resulted in injuries to others might necessarily also involve negligence since willfulness and wantonness might be said to involve a reasonably anticipated consequence. Court decisions had sustained insurers in their refusal of coverage in certain of these cases. Appleman was especially concerned over cases in the many states where guest passenger laws were in effect. These laws specified that the auto driver would not be legally liable for injuries to a guest riding in the insured automobile unless willful and wanton conduct of the driver were involved. Appleman took the position that for a company to refuse to defend its insured in such a case, it would be guilty of "unscrupulous legal sharp-shooting" and "undeserving of public trust and confidence."

The history of rating methods reflects a growing sophistication in the gathering, development, and use of statistics. The great
multiplicity of rates that have come into common use since the middle 1960's make the rating methods in use from the middle 1920's to the late 1930's appear almost ludicrous. In the early period as in the post-World War II period, insurers tried to meet the test of developing rates which were adequate but not excessive and not unfairly discriminatory. In explanation of "adequate but not excessive," the rates charged by insurers were required to produce sufficient funds to pay claims, meet operating expenses of the company, and to provide a reasonable profit. The philosophy which these phrases express has not changed, however, the method for calculating "reasonable profit" has been called into question as will be seen later. In the matter of "not unfairly discriminatory." The great change involved is the enormous proliferation of rate groups.

The following discussion of rates will be based upon use of a vehicle for private business and pleasure use only, ignoring such commercial use as that involved in making sales or service calls including taxi service, livery use, or for-hire hauling. A private passenger automobile, in 1925, according to the standard rate manual, was rated for bodily injury liability insurance only on the basis of the territory in which it was usually operated or "garaged" and on the price and structure of the vehicle. A small discount, however, was allowed for vehicles operated only by the owner. It may seem surprising when noting that by the late 1960's rate manuals listed hundreds of territorial classifications that state regulatory authorities would have permitted rates to be used as late as 1923 in which only eight different rating territories were recognized for the entire nation, yet this
was the case. 18 Chang... came rapidly as in the 1924 the Casualty Actuarial Society was told that a vast mass finely divided experience data had been developed, allowing rate-making to take definite form and structure. The speaker noted that 50 territories had by that time been established. 19 By 1927, an insurance text listed fourteen territories for New York state alone. It was obvious that insurers were taking note of the wide differences in claim experience that grew out of the differences in such factors as density of traffic, traffic safety attitudes, laws and enforcement, average size of claims payments, claims consciousness, jury attitudes and others. The rate schedules referred to here were those of the National Bureau of Casualty and Surety Underwriters. But H. Jerome Zoffer's history of liability insurance rating notes that by 1928 some of the insurance departments were beginning to reject these rate filings and those of other bureaus and that a number of insurers were making independent rating filings with the states. Nevertheless, it was many years before significantly far-reaching changes were made by the industry as a whole.

It is interesting to note that one leading company insists that its founding in 1926 occurred because farmers, feeling that being charged the same rates for insurance as city dwellers was unfair, organized their own company. It is clear from the record, however, that rate difference between city and rural dwellers did exist in 1925. For example, one insurance text revealed that minimum bodily injury liability coverage ($5,000 per person/$10,000 per accident) on a medium sized automobile (Buick) was priced at $103 annually in New York City (the highest rated territory) while in a rural sparsely populated area
(the lowest rated territory) the coverage was quoted at $19. It would seem that those establishing the company in question felt that even a $19 rate was excessive, especially when combined with other coverages desired on the automobile, and that their company by selective methods would be able to develop lower claims cost than that contemplated by existing insurers.

The second part of the method of classification involved the selling price of the new automobile. This method had evolved from an earlier system basing the rates charged on the horsepower rating of the automobile. Greater horsepower had been associated with the size and speed of the vehicle and hence with its potentialities for injury and destruction. E. F. Hord's early history of liability insurance, referred to above, discusses the underwriter's difficulties whenever the horsepower race among various makes of vehicles arose in the pre-1920 period. For a more reliable base, underwriters shifted primarily to the price basis, admittedly also an imperfect method for determining rates. Nevertheless, the use of the symbols W, X, Y, and Z were based as one authority in 1923 said "partly on price and partly on experience" was established. Another authority writing in 1929 stated that these symbols, "W" for the lowest rate and "Z" for the highest rate represented "list price, wheel base, brake, sic horsepower, and so forth."

New York City rates for 1923 revealed that a "W" rated car was charged $88 per annum for a minimum policy; the "X" rate was $103; the "Y" rate $119 and the "Z" rate $134. The 1927 rate manual revealed little change.
The changes in the basis for determining rates for several years was largely in the area of the expansion of the territory definitions. Apparently by the late 1920's the "Z" rating was dropped, in a few years it was noted that the "W" and "X" categories presented little difference in loss experience, and by 1935 it was noted in a New York study that the "W" to "Y" classifications had become practically meaningless since the loss experience had drawn closer and closer together. C. A. Kulp's 1942 text edition on casualty insurance noted that the force of competition among insurers and the fear of compulsory insurance helped to develop new bases for the calculation of rates that would be reflective of claims costs for various groups of driver usages. Kulp states that the new criteria involved liberal use of judgment, "hunch or perhaps wishful thinking." The rate-maker could begin to collect statistics to accurately check his judgments only after the time that new rates were announced. Actuaries did have certain state records of automobile accidents classifying drivers involved by age; also certain insurer experience provided some statistics on accidents for business and non-business use, and annual average automobile mileage estimates were available. This formed the basis upon which vast rating bases changes were made.

In April, 1939, the W - X - Y - Z categories in most states were largely abandoned or supplemented by a new classification system though a few states retained the older system. The new categories completely discarded classifications for liability rated based on vehicle weight, price, or power and emphasized the use of the automobile. A basic rate (class A) was established for private passenger cars that were used
primarily for pleasure (within the classification use of the vehicle, to travel to and from the insured's place of employment was permitted). Another class (A-1) was established for auto owners whose vehicles would not be used to travel in excess of 7,500 miles annually and where there were not more than two operators in the household and no operator under the age of 25 years. A third class (B) included all owners of private passenger automobiles not classifiable in the two classes mentioned above nor subject to giving evidence of financial responsibility. A fourth class (C) was set aside for those subject to the laws requiring the filing of evidence of financial responsibility just mentioned. Territory definitions had been expanded to number several hundred; the applicable percentages below were applied to the territory and class rate established.

In terms of the class B premium, class A rates represented a 20 per cent discount and A-1 rates a 25 per cent discount. The C rate was in the form of a flat extra charge beyond the class B premium depending upon the cause for filing, e.g., failure to pay a judgment, hit-and-run accident, or driving while intoxicated. 22

It would seem that this 1939 adjustment in the rating classification system was extremely slow in developing. The insurance industry had been insuring millions of automobiles for well over a decade before this fundamentally more equitable change was made. In retrospect it would certainly seem that experimental programs using a more discriminatory method of rating than the price, size, or weight of the vehicle could have been developed much earlier. It would seem that this is an
area of vulnerability when the past record of insurers is examined to determine their exercise of public responsibility in self-regulation.

A related problem of extreme public concern has been that of developing a rating system that would take cognizance of each individual's own driving performance. Such attempts have a long history but on balance they have a very dismal record. The lack of success in this case does not seem to stem from a failure of effort by actuaries and underwriters but from a mistaken public conception of the inapplicability of individual records to rating classifications. A review of the history of these plans will reveal some of the inadequacies of individual merit or demerit rating.

In 1929 a plan was introduced which offered a discount on each individual policy based upon a period of no liability loss having been sustained by the insurer. The discount offered was 10 per cent per annum per car insured based upon an "no at-fault accident" experience period of twenty-one months ending three months prior to the expiration to the renewal date of the policy. This plan designed by the stock companies composing the National Bureau of Casualty and Surety Underwriters was apparently offered to new customers and to renewal clients. This approach to rating appeared attractive for a number of reasons. The stock company insurers felt that it would be a useful competitive tool against mutual companies who charged lower rates. Stock insurers would expect the discount to help hold old customers if not perhaps also to attract new ones. It was expected to encourage safe driving, resulting in lower claims costs for the company. It was also expected to help attract more drivers to buy insurance voluntarily and
therefore to become a weapon against those demanding compulsory liability insurance. Finally, it was felt to be a just means for arriving at rates since the "accident prone driver" (it will be recalled that this elusive type was thought to deserve top priority in the accident prevention movement at that period) would pay more for his coverage. 23

However, as Kulp states: "Despite high hopes of its sponsors for this 'great forward step' the plan was abandoned early in 1932." It has been pointed out that the plan failed because it was expensive to operate and the information available concerning past accidents was not always reliable—police reports were often unavailable, policyholder statements could not always be relied upon, and inspection reports were often not thorough. 24

In 1942 Kulp maintained that merit-rating had three major objectives: promotion of highway safety; attracting additional customers; and equalizing rates. He took the position that insurance actuaries were by no means convinced that rate equalization could be obtained. The single car risk developed so low an accident frequency rate that credibility (see the following paragraph) was very small. Estimates vary from one liability loss in five years to one in twenty years per driver. This tremendous variation would seem to be partly explained by the varying definitions of "liability loss." It might be defined as a case in which a claim was actually paid, one in which an injury had occurred to another party, or perhaps it might be interpreted as any accident reported which necessitated a notice of loss being filed by one insured for liability coverage. In any case, either involvement in
an accident or the payment of a claim did not necessarily mean a measurably greater probability on the part of an individual driver being involved in another mishap.

Insurers, however, eagerly accepted and overstressed the argument that one loss increased the probability of future losses. They apparently were being overly influenced by the theory that accident repeaters were the cause of an extraordinarily high proportion of all accidents. While much might be said for the device of merit-rating as an advertising "gimmick" because of its popularity with the public, its contribution to rate equalization was highly questionable. Any discount based upon even three or four years of no accident driving was not actuarially sound. Only minute discounts could be awarded even when several more years of accurately tabulated experience for the average driver were included. As a safety-promoting measure only a reasonable guess could be made since, as indicated earlier in this study, the many factors in accident causes could not be determined with reliability. Rewarding safe driving in the form of lower rates might be a slight factor in safety promotion but many other factors might be far more important.

Nevertheless, another merit-rating plan was developed and offered to the public by the National Association of Casualty and Surety Underwriters in 1938. Kulp quotes Superintendent Louis H. Pink of the New York State Insurance Department in his argument that the new plan was "technically weaker than its predecessor." The Safe Driver Reward Plan attempted to correct earlier problems involving inadequate records and competitive abuses by agents by giving a discount of 15 per cent.
but only to the company's own insureds based on the past year's liability accident free record. Superintendent Pink pointed out that there was no reason to believe that the plan would reduce accidents to the amount indicated and that the discount would have to be made up by raising the over-all insurance rates. He rejected the plan for his state stating that the plan was not a "proper or scientific" rate.25

Interestingly a special plan called the New York Preferred Risk Rating Plan was approved in 1938 for that state which used a "stick" rather than a "carrot" approach. A penalty rate was assigned in which a surcharge of up to 15 per cent was required of insureds presenting bodily injury claim or claims within a twenty-one month period ending three months prior to a policy renewal date. This plan still seemed far from Mr. Pink's own standard of approving plans only when they reflected an accurate measurement of hazard. The New York plan did prevent sales abuses but the penalty rates were certain to be exacted from some whose accidents or the consequences of them occurred by pure chance. Both of these plans were withdrawn with the outbreak of World War II as the companies sought to reduce the considerable administrative expense connected with them. The idea of merit-rating was not dead, however. It was reintroduced by the same bureau companies in 1959 but on this occasion with much refinement. This greater refinement will be discussed at a later point in connection with the enormous proliferation of rating bases that occurred in the post-World War II period.

Up to this point in Part II the product and pricing and underwriting practices of insurers of the pre-World War II period have been
discussed. Claims practices are, of course, also crucial to assessing the social significance of automobile liability insurance. It is appropriate that something be said of this area before concluding the pre-World War II discussion with a review of general commentary and criticism of automobile insurance in this period. Unfortunately there is almost no material relating to a study of claims practices in the pre-World War II period. The materials available discuss the cooperative practices of insurers in the prevention of fraud. This is, of course, important as fraudulent claims certainly increased the costs of insurance for all insureds. Zealous efforts by insurers to prevent this practice were warranted. But a danger involved was that too great a suspiciousness in regard to claims could lead to a public relations problem. The interest of this study is a broader one than that encompassed by the problem of "professional" claimants and concerns rather the fairness and public acceptability of usual claims practices. One may infer that the industry had relatively little problem in this broader area since early insurance texts and journal articles in the 1925-1941 period say nothing to indicate that a serious problem in regard to claim philosophies or practices of the companies existed.

The claims function was certainly one of the important facets of the regulation of insurers by state governments. However, studies of insurer practices from these records are apparently very rare and those available might well give a false impression of the whole. Kulp quotes the 1936 annual report of the Superintendent of Insurance of New York to the effect that though insurance laws did not give the insurance department power to enforce its opinions in regard to claims settlements
that the department "had been unusually successful in amicably adjusting claims disputes."26

What can be said at this point in the study about insurer claims policies and practices must be merely introductory to studies and commentaries in the post-World War II period. An outline of procedures among automobile insurers for handling investigations and adjustments, a review of the policy content pertaining to claims, and a summary of the policyholder and public relations aspects of the claims function will provide such an introduction. As indicated above, the fairness of claims practices of insurers was of concern to state governmental authorities. It can be inferred from the above paragraph that state governments generally wished to avoid involvement in directing or even reviewing the claims procedures. This writer learned upon inquiry of an official of the Department of Insurance of the State of Ohio, for example, that no formal group study had ever been made of public or insured's complaints.27 The writer infers from his own experience and from the lack of formal studies that such complaints are fairly rare and as indicated above usually amicably settled when they do occur. The factors promoting such a situation involve the desire of the insurers to retain good public and client relationships.

Upon the presentation of a notice of loss involving possible liability upon the part of an insured, the insurer assigns a professional claims investigator, often from its own staff or from an independent claims adjusting service. While often attorneys or persons with considerable legal training were employed in this task, much of the
earlier work in connection with investigating a claim is often handled by persons with less specialized training.

The first task of the field claimsman or adjuster involved is the determination of coverage. Such questions as whether the policy was in force at the time of the accident, whether the driver of the automobile was one afforded protection, whether the auto was the one described in the policy or another covered under the policy terms, and whether the use of the automobile was of the type covered under the policy were items of immediate concern before an investigation of the circumstances of the accident itself could begin. The claimsman would be expected to take notice of any suspicious circumstances that might indicate collusion or fraud in respect to these coverages. If such were discovered, he would be required to resolve these before proceeding to investigate the claim. Circumstances might, for example, require the claimsman to use special care to avoid waiving the policy conditions provided for the protection of the insurer.

Courts have held that the insurer which continues in the investigation or defense of a claim after it has acquired knowledge of violation of policy conditions may be prevented from using these violations to later avoid coverage. If an insured's violation or possible violation is discovered the insured must be so notified. The investigation may continue only upon the signed non-waiver agreement of the insured. In this agreement the insurer is granted the right to continue the investigation without waiving its right to later deny coverages.
In the use of the non-waiver agreement, as in many other phases of the claims procedure, a strong emphasis upon insurer and public relations was required of claims personnel. The claimsman must exercise caution in obtaining honest and open and complete statements from the insured and all occupants of the vehicles involved as well as from witnesses. Antagonism created could lead to less than complete cooperation with possible adverse affects on the negotiations and final settlement of a claim. The initial phases of processing a claim also included an examination of the scene of the accident, inspecting the vehicles involved, and obtaining police and medical reports.

Once the information was gathered and evaluated and any coverage question resolved, the insurer proceeded to evaluate the probable liability of its client. If liability was adjudged to exist an evaluation of the claim generally proceeded as rapidly as possible. It should be noted, however, that a denial of coverage to the insured might have been necessary. In that case the insurer gathered whatever information it considered necessary in the event a court suit brought by the insured should require the insurer to later defend against the claim. This study has indicated earlier some of the conditions that could bring this about. The obvious bad public relations that could be incurred because of a denial of coverage caused insurers to proceed very cautiously in this area. Kulp notes that in the 1937 annual report of the New York Superintendent of Insurance, "solvent companies in general are not inclined to make use of technical defenses against their policyholders and that an unusual increase in the number of complaints against a company is a broad hint of the need for investigation."
The evaluation of a claim preparatory to offering a settlement was often a difficult matter, the results of which were fraught with much room for disagreement and dispute at the negotiation stage. At this point, the insurer was in full command of the situation. Claims examiners usually situated at the regional office or the home office of the insurer usually made the evaluation of severe claims and then authorized the field claimsman to deliver an offer to the claimant. Such difficult matters as a claim value of the loss of a life, a permanent disability, or pain, suffering, and disfigurement were often required as well as more easily determined matters such as medical expenses and lost wages. The values connected with former items were often a matter of pure conjecture. The insurer sought to offer, providing the insured's liability was clear, amounts within the policy limits that would prevent the claimant from taking the claim to court. It is to be noted that limitations were rarely, if ever, set by laws. Again government avoided any interference preferring to allow the private enterprise system to work out equitable means of settling these matters without state dictation. In cases of doubtful liability or wide disagreement on the value of a claim, the insurer often stood its grounds on a refusal of a claim or on the size of an offer preferring a court adjudication of the matter rather than overpayment.

The area of the evaluation and negotiation of insurance bodily injury claims, as it is widely known, has been one of extreme controversy. It brings into consideration the inadequacies of the fault system and the almost impossible task of fairly evaluating a claim when the evaluation is ultimately based upon review in the adversary system.
of the courts. Claimants apparently did not usually experience difficulty in obtaining the legal representation necessary to obtaining an equitable court hearing but the cost and delay involved contributed to the extreme criticism directed at the liability system and indirectly at liability insurance. Insurers, of course, also employed attorneys whenever a suit was filed. Legal fees and the court costs eventually were paid in the form of higher rates by the whole insuring public. While no statement could be located for the earlier years of this study, an estimate in recent years has stated that only 31 out of every 33 collected for liability insurance coverage is paid to claimants. The other 32 are used up primarily in sales and administrative costs and claims investigations and defense. Probably the public was not generally aware of the great costs involved in providing and operating a system that required a decision concerning negligent operation in every individual accident case.

One major study undertaken in 1932 which foreshadowed the intricate studies of the 1960's had pointed to the uncertainties, injustices, costs, and delays of the liability system. This study was made by the Columbia University Committee to Study Compensation for Automobile Accidents. It reached essentially the same conclusions as those of Judge Marx mentioned earlier, that is, liability insurance should be abandoned in favor of compensation. The new element involved was the study of hundreds of cases involving accident victims. The other discussions in general were not statistically based. The study showed the great costs involved in legal fees and other investigatory services; it also showed that claimants with injuries of a minor nature were overpaid but
that the person seriously injured was likely to be undercompensated. Despite the lack of wide acceptability of the remedies offered, it was credited with launching a large-scale empirical research into law in action. The Columbia study did sidestep basic policy issues as to the public acceptability and full legal ramifications of the compensation system but was nevertheless credited with the launching of a "no-fault" system in Saskatchewan, Canada in the post-war period. The Saskatchewan experiment in turn became of enormous interest to American insurance and law scholars and journalists in examining and re-evaluating American fault law and the liability insurance system.  

After a number of years of experience with the early financial responsibility laws had gone by, during which the attention of the country was turned to overcoming the worst of the great depression, the nation began to consider the adoption of more financial responsibility laws. These represented primarily an attempt to increase the percentage of insured automobiles. Estimates of the percentage of all vehicles outside of Massachusetts that were insured, though they vary considerably, ranged from about 20 per cent in 1925 up to about 35 per cent by 1937 when New Hampshire enacted the first of the stricter laws in the face of a rising national accident toll.  

A major new coercive feature was activated by requiring that all accidents involving bodily injury be reported to a state agency. This was initiated in New Hampshire and later adopted in all states. Included in the report was the question of whether liability insurance was in force at the time of the accident. If it were not the state agency officials were charged with inquiring into the circumstances and
results of the accident. With rare exception, in moving vehicle accidents the driver of an uninsured vehicle was required either to post a cash bond to the amount of the probable costs of the injury, an amount usually not over $5,000 per person or $10,000 per accident, or to obtain a release from all damages from the injured party or his representative. Usually the state required the uninsured driver to insure or post bond for future accidents. The penalty for failure to do so was the loss of driving privileges in the state.

It was no longer necessary in order to activate the law for the injured party to go into court and obtain a judgment against one causing his injuries. In effect, the state presumed the uninsured to be guilty of negligence unless he could prove otherwise. The bond if posted was forfeitable to the injured upon judgment. The "tiger" now had teeth. As other states followed New Hampshire's example and enacted laws of this type and as the public became aware of them, the "popularity" of insurance rose. By the late 1940's or early 1950's the average percentage of American automobiles insured had risen to an estimated 80 per cent.

This action caused private automobile insurance to appear more than ever to be an arm of social insurance and eventually to be regarded almost as a public utility. With New Hampshire leading the way the states adopted assigned risk plans to assure that almost anyone, regardless of normal insurer rejection practices, could buy automobile liability insurance. The effect of these state plans, which required that all insurers writing coverage in a state participate, has already been noted in the safety portion of this study. It may be reiterated
that these plans represented a defense of the liability system and of the private insurance industry though they involved considerable losses of money for the insurers in their operation. 31

Financial responsibility laws included a provision which required that insurers make a liberalizing change in their policies as regarded possible claimants against their insureds. The laws required that the insurer abandon certain conditions or clauses of the policy which previously could have been used to deny coverage to the insured. This applied whenever the policy was filed with state authorities to guarantee future financial responsibility. The insurer was required to defend and perhaps to pay claims in accident victims even though the contract were violated in some respects. These would involve, for example, false statements of the insured in regard to the declared use of the vehicle, the regular operators of the vehicle, the principal place of use and the clauses pertaining to prompt notice of accident, or failure of the insured to give notice of claim or suit when received, or the failure to give the required cooperation of the insured in connection with investigation and defense of a claim. The insurer might then file a counter-claim against its insured but the recovery under such an arrangement rarely matched the total claim paid and expenses involved.

In 1945, in the case of the United States vs. South-Eastern Underwriter's Association, the Supreme Court declared insurance to be interstate commerce. With strong insurer backing, the states moved to strengthen their controls over insurance rates in order to avoid pre-emption of insurer regulation by federal authorities. The days of
moderate if not innocuous controls of premium rates came to an end as state legislatures generally required that the state insurance commissioner could now disapprove rates filed by insurers. One far-reaching part of the new state rating laws was that approving the independent filing of rates by certain "non-bureau" companies. These non-bureau or independent companies had often in the past felt coercion ("independent action was frowned upon") from insurers who did belong to the large National Bureau of Casualty and Surety Underwriters or the American Mutual Insurance Alliance.\textsuperscript{32}

The independent insurers created their own organization, the National Association of Independent Insurers in June, 1945, and won a concession permitting full recognition of their uninhibited right to file separate rates and coverage forms. Any interference with this right might well be regarded now as a violation of the Sherman Antitrust Act. Bureau rates, rules and policies were still permissible but the independents were now destined to bring greater competitive pressures than ever against the traditional companies. The smouldering struggle between low-rate, select-risk, "deviating" companies and the "old-line" companies was now to place additional pressures on the liability system already struggling with numerous burdens. Already for over two decades accusations had been hurled back and forth between the traditional stock companies (accused of high rates) and the mutuals (accused of poor service and instability). Lately the mutuals had greatly proliferated and were being joined by maverick stock organizations. Especially in the area of sales and underwriting practices,
including the agency arrangements, the insurers found faults with each other much to the confusion and consternation of the public. Most of the story, however, belongs in the context of the total criticisms of the industry and the fault system which was pressed with renewed vigour in the 1960's.
Footnotes - Chapter VIII


3 Cited in Bowers, Compulsory Automobile Insurance, pp. 120, 123-9.


5 Ibid., pp. 157-165; 206-208.

6 Ibid., p. 208.


8 Bowers, Compulsory Automobile Insurance, pp. 32-4.


12 Ibid., p. 93.
E. W. Sawyer, Automobile Liability Insurance (New York and London: McGraw-Hill Book Company, 1936). This work is devoted entirely to an analysis of the 1935 standard policy from which these comments are drawn.

Ibid., pp. 66-70.

Various articles in the Journal of American Insurance during 1935 and 1936 develop this argument.


Appleman, Automobile Liability Insurance, pp. 210-1.


Ibid., p. 518.

Zoffer, Automobile Insurance Rating, pp. 223-6.


Ibid., pp. 562-3.

Ibid., p. 611.

Ibid., p. 611.

Interview with George Hildebrand, Chief of Rating Division, Department of Insurance, State of Ohio, February, 1971.


Brainard, Automobile Insurance, pp. 440-1.
30. Ibid., p. 429.


33. Ibid., pp. 442-52.
CHAPTER IX
CHALLENGES INTENSIFIED, 1947-1968

The last two decades of the period under study reveals an intensifying and converging of pressures on the fault system and liability insurance that have for the most part already been analyzed. The intensification and convergence of pressures seems to have been primarily connected with the fact that liability insurance, operating through the legal requirements of a misunderstood and unacceptable fault law, had by the late 1940's reached the point of social insurance. That is, for all intents and purpose the ownership of liability insurance was now required of all automobile owners by the state. This, of course, meant that all insurer operations would be subject to close public scrutiny.

The questions raised in this connection are illustrated by the following: (1) Did insurers provide an adequate market, that is, could all members of the public now purchase the required coverage through existing private insurance channels? (2) Was the service offered fairly and equitably priced? (3) Were the insurers fairly, equitably, and rapidly discharging their obligation to pay claims? (4) Did the insurers appear to be able to remain solvent? (5) Was state regulation of insurers adequate? (6) Was the fault system itself one which the public would continue to accept? (7) Were the insurers adequately meeting their total obligations in such a way as to permit and encourage desirable changes?
It is not possible to offer definitive answers in these areas. However, it can be stated that society and the insurers particularly were aware of these problems and that they were seeking to make possible an affirmative answer to each of the questions raised above. Also, it can be stated that numerous in-depth studies were undertaken by individual insurers, by insurer associations, insurance professors, attorneys, public legislative and administrative groups, university research teams and others concerned with the problem. These studies contrasted with the less searching, unbalanced, and often shallow criticisms of the early period. There was much greater recognition that private enterprise in the insurance field was under dire threat of extinction. Public authorities, the insurers, and the critics generally evidenced a determination to meet these threats and to retain private enterprise as the chief means to meet the costs of auto accident bodily injuries. At the same time their activities reflected a recognition of the need to make important and perhaps basic modifications of the system if it were to survive.

The 1947-1968 period will be treated as a whole through an exploration of the various phases of insurer operations and the concerns being expressed about them. The continuing and intensifying of means to achieve a 100 per cent ownership of liability insurance by automobile owners is considered. The desire to have as many injury victims as possible eligible for adequate reimbursement for their injuries is examined. Other aspects explored are those involving increased competition among insurers, the fairness and equitableness of rates, the rising loss ratios and insolvency problems, the adequacy of the market,
the claims function, and finally the challenges presented to the fault system.

It has been noted that financial responsibility laws had two chief objectives (1) "to segregate and penalize in one way or another the bad driver and thus aid in accident prevention"; and (2) "to require insurance of car owners and drivers, and thus gradually to increase the proportion of recoveries for automobile injuries, only as owners or drivers prove their inability to pay damages or otherwise demonstrate their driving or financial unreliability." insurers backed these laws primarily as a strategy designed to quiet the demand for compulsory insurance. A survey of opinions published in 1942 revealed little substantiation for the safety claims. This was corroborated by the accident research studies published in Haddon, et al., Accident Research (1964) and Little Associates, The State of the Art of Traffic Safety (1966). Insurance Professor C. A. Kulp also noted in 1942 that with the possible exception of New Hampshire (which in 1937 had enacted a more strict law) that it was not possible to prove that the early financial responsibility laws had greatly increased the ownership of liability insurance. Kulp indicated that insurers were disappointed with these laws because they had not materially increased the percentage of insureds but also because they placed insureds "in the unpleasing and often impossible position of being asked to act as a policeman."

But in the context of the too slowly yielding traffic accident problem, the growing concern over the uncompensated accident victims, and the very unattractive alternatives, insurers backed the more strict
financial responsibility laws of the 1940's. In 1961 a review of the 50 states revealed that all states required that financial responsibility proof for each accident was then mandatory on pain of loss of driving privileges. The new laws were intended to effectively close the gap left under the old "first-bite" laws. (The "first-bite inadequacy referred to the fact the earlier laws did not require the filing of evidence of financial responsibility unless the injured party secured judgment. This was highly unlikely to be done since any filing required would not provide for reimbursement of the injured party.) However, the gap was only partially closed. The percentage of vehicles estimated to be insured, as given by state official's statements made mostly in the mid 1960's, averaged well over 80 per cent on a national basis. But the remaining approximately 15 per cent of uninsured drivers continued to be responsible for a large public dissatisfaction with these laws. In cases of accidents caused by these persons suits were often required and then judgments often remained uncollectible. The informed members of the public became disenchanted with the safety claims of financial responsibility laws realizing that education, engineering, and enforcement of measures more directly related to safety would likely be more effective.

In the 1950's the insurance industry became more interested in promoting other schemes in the effort to increase the ownership of insurance, schemes such as merit rating, uninsured motorists coverage, limited absolute liability plans, and increasing the prevalence of two-party insurance by offering coverages such as medical payments in conjunction with basic liability coverage. However, the gaps left by
financial responsibility laws still placed heavy burdens upon the cost of some of these programs. Legislatures as well had other ideas as to closing these gaps and soon proposals for compulsory liability insurance were revived along with the appearance of unsatisfied judgments funds.

All of these proposals and actions can be recognized as patchwork measures in that many victims would remain uncompensated because of the negligence laws requirements. Also the high costs involved in attempted loss shifting from victims to defendants or insurers, and the slowness, uncertainties, and frictions involved in pursuing the requirements of fault law caused public discontent. Nevertheless, there was still strong attachment to the negligence system, that is, to make the "guilty" party pay for the damages he has inflicted. Each of these new attempts to keep the system alive will be briefly examined below. The discussion begins with a state action designed to fill one of the gaps left by the financial responsibility law.

The first unsatisfied judgment fund was established in North Dakota in 1948. It followed examples set in Canadian provinces. These funds have had only limited acceptance. Only four other states, New Jersey and Maryland in the mid-1950's followed by New York in 1958 and Michigan in 1965, have enacted these plans. Kulp and Hall's, Casualty Insurance (1968) offers the following illuminating summary:

The characteristics of unsatisfied judgment funds in the United States vary and are subject to change at legislative pleasure, but the principles are similar. The common objective of all unsatisfied judgment funds in operation today is to pay the victims of an automobile accident (including pedestrians and nondrivers) when a judgment is uncollectible because the defendant had no
insurance or other assets, his insurer was insolvent, or because his insurance contract was void for coverage reasons. The claimant is required to exhaust other means of collecting a judgment fund legislation is in addition to the financial responsibility laws in each jurisdiction, and hence the uninsured motorist on whose behalf a judgment is paid must reimburse the fund with interest before his driving privileges are restored.\footnote{5}

These funds attempt to protect the "achilles heel" of the financial responsibility laws by providing the innocent victim with a reasonable indemnity for his misfortunes and thus to provide a defense against compulsory insurance. Major objections, however, have been raised against the system. It has been alleged to be difficult and expensive and perhaps inequitable in its administration. The public seems to have misunderstood the system, insurers have objected to the plan because it smacks of state insurance which threatens the private insurance industry.

The plan requires an investigation to substantiate that liability exists and that other means to collect judgment have been exhausted. Since the fund is not notified until long after an accident has occurred the liability is difficult to establish. Insurers are in some instances required to conduct the investigation and defense of the claim. Recoveries from the fund are slow and uncertain. The provision for reimbursement of the funds through re-collecting the amounts paid out from uninsured motorists has not provided adequate sums for the fund's operations. As a result, fees to make up the deficit are collected from the general public and by a tax upon insurers. This means that responsible motorists are paying the "sins" of the irresponsible.
There is evidence to indicate that the funds are discouraging
the purchase of liability insurance since some motorists apparently be-
lieve that the general assessment relieves them of this necessity. In
some instances public pressures have forced the states to restore
driving privileges despite the fact that the offending motorist has
made only token efforts to repay the fund for judgments paid on his
behalf. The insurers fear that this mechanism will provide an in-
road by which government will take over larger and larger segments of
the insurance market. A peculiar feature of the New York law, which is
administered by the Motor Vehicle Accident Indemnification Corporation
is that it covers more than unsatisfied judgments (a fuller explanation
will be provided below) and in fact may be regarded as a mandatory un-
insured motorists coverage. 6

The uninsured motorist approach in New York, which also became
the second state to enact (in 1956) a compulsory liability insurance
law, provided partial impetus for insurers to offer such coverage pri-
vately and on a voluntary basis as an additional feature of a policy
providing basic liability coverage. By the early 1960's insurers were
were offering such coverage generally throughout the United States.
With North Carolina in 1957 having joined Massachusetts and New York
in adopting compulsory insurance and with a number of other states
seriously considering such action, insurers offered the broad coverage
and relatively simple and inexpensive uninsured motorist's coverage as
a more acceptable alternative to either unsatisfied judgment funds or
compulsory insurance. 7
The uninsured motorist coverage provided that the insured's own company would reimburse him for injuries caused by a negligent and financially irresponsible motorist. Expenses caused by negligent "hit and run" drivers were covered and in many instances the coverage was eventually expanded to include expenses that were unreimbursed by reason of the insolvency of negligent motorist's insurer. All bodily injury expenses normally payable under a liability policy up to the coverage limits, usually $10,000 per person or $20,000 per occurrence, were payable. Mandatory subrogation provisions are granted to the insurer. This means that the insurer, having paid the claim to its insured, may proceed to attempt to recoup its losses from the negligent motorist.

The most serious potential problem associated with the uninsured motorist coverage is that the insurer must take the adversary position required by negligence law against its own insured. But despite this feature the coverage has been very popular with the public. It has eliminated the necessity of proving the wrongdoer's unwillingness or inability to pay and a court judgment is not required in order to obtain payment. There is some indication that insurers are being quite lenient toward their clients, that is they may not be putting forth a great deal of effort to disprove negligence on the part of the uninsured motorist or to show contributory negligence on the part of their insured. Bar associations have made it quite plain that insurers would be considered in violation of legal ethics if they should provide legal assistance to the uninsured defendant.8
Uninsured motorists coverage is also popular because it is inexpensive. Coverage rates are usually less than $6 per annum per car. This low rate is possible because of the chances of being injured by an uninsured motorist are not great, because of sales packaging with other coverages, and because of the subrogation collections that the insurer is able to make. At the present writing (1970) the coverage, especially when sold in conjunction with medical payments insurance, may be regarded as one of the most successful moves by insurers to forestall compulsory insurance or basic changes in the liability system. If the "honeymoon" ends it may be because of the human tendency to invent "hit-and-run" accidents to cover up for accidents from other causes as the coverage becomes better understood and more universal. It may also be because the states have begun to make the coverage mandatory on all liability policies, thus developing a compulsory feature of the type that has been unpopular with the most state governments and insurers alike in the past.

The New York law has been one example in which this coverage has been tied in with compulsory insurance and made an extension of unsatisfied judgment coverage. In that state the coverage is provided on an estimated 98 per cent of all cars on the highway (the other 2 per cent are being driven illegally). It is financed by an assessment against all insurers writing automobile insurance in the state. Apparently because of nearly universal insurance and political resistance to adequate increases as well as for other reasons, New York insurers have had extremely high loss ratios despite the highest average rates in the country (middle 1960's). The pressures in the state were
intense for abandonment of the fault system or for finding a viable way of reducing rates.\textsuperscript{9}

Both unsatisfied judgment funds and the uninsured motorist's coverage depended upon the fault system and tended to operate as defenses of the system. But attempts were also being made to lessen dependence upon the system. These attempts included the medical payments coverage introduced in the 1940's and a medical payments extension called Automobile Death and Disability Coverage (\textit{AD and D}) introduced by the National Bureau of Casualty Underwriters in 1956. They also included in a new departure called Family Compensation (sometimes more accurately referred to as alternative compensation) introduced by Nationwide Insurance Companies (Columbus, Ohio) in 1956. This type of plan was made more widely available in the insurance industry in 1967 in a plan approved by the American Mutual Insurance Alliance called the Guaranteed Benefits Program also sometimes called alternative compensation.

Medical payments and the death and disability coverages were two-party coverages in no way related to the fault system and provided benefits only to the insured, his family, or guests while "in, upon, entering or alighting from" the insured vehicle and to the insured and family members while riding in other cars or being struck by a car. Benefits ranged generally up to $5,000 for medical expenses, up to $50 per week disability benefits for the length of the disability for the lifetime of the victim, and up to $10,000 accidental death benefit on the \textit{AD and D} coverage with lower benefits under the medical payments coverage generally including only medical and funeral expenses.\textsuperscript{10}
The alternative compensation plans provided not only two party benefits as a substitute for those described just above, but also third party benefits. The Nationwide plan was frankly experimental and was designed to pay benefits to all persons injured in an automobile accident regardless of fault. It has been described by Nationwide's director of research as "an experiment in absolute liability." When Nationwide introduced Family Compensation, the company said:

We believe the economic and social consequences are just as great for the accident victim, even if fault cannot be established. The injured victim should not be placed in the position of establishing the wrong doer and proving his negligence before receiving compensation.

We believe there should be an economic remedy independent of any legal remedy. At the same time, we feel the injured party should have all his rights under the law of negligence and be able to prosecute his claim to the utmost if he so desires. The choice should be left to the claimant—to either accept compensation certain or gamble in the courts.

We believe liability insurance together with a suitable alternative is something the motoring public must have. Compensation based upon fault is philosophically out of tune with the modern demand for payment certain.11

The third party aspect of the coverage provided that the victim might elect to receive indemnity, disability and death benefits in exchange for a release of all claims against the insured. Medical expenses were provided up to $2,000 per person and per accident. Disability payments based upon confinement were payable at the rate of up to $5 per day up to 180 days and a death benefit of up to $5,000 was also provided.

In a thorough review of the third party aspect conducted in 1964, Nationwide determined that the accomplished objectives of the plan were
not sufficient to merit its continuation. The insurer found that the coverage had not attracted industry emulation and that conducting the program unilaterally was having little impact on the total auto insurance problem. It also found that while the system aided in disposing of small, borderline, nuisance claims that in the larger cases where a clear or reasonable chance of proving liability seemed likely that the victim chose to pursue his claim under the liability laws. Only one out of five cases was brought to settlement under the optional guaranteed payment feature. The company therefore concluded that even if adopted industry-wide the coverage would probably be only a limited success in relieving court dockets and in otherwise cutting the costs and delays contributing to public distress over the automobile problem. 12

Further than this a great deal of concern was expressed internally especially among Nationwide's claims people. It was alleged that the "give-away" feature was demoralizing to field claimsmen whose basic training in all other respects was required to reflect an attitude of "pay only what is owed." For several years of its operation, the coverage was made available to all third parties regardless of how wilful, wanton, or anti-social had been their behavior in contributing to or causing an accident. In 1962 Nationwide revised the coverage so that compensation was no longer offered to those guilty of gross negligence or those whose driving while under the influence of alcohol clearly and materially contributed to or caused the accident.

Yet third parties guilty of causing accidents were paid and the company management was eventually convinced to withdraw the third party
feature of the plan altogether. In doing so they noted the growing popularity and feasibility of uninsured motorists coverage. They intimated that the industry and probably the public also was not ready to abandon the fault system as evidenced by its greater acceptance of uninsured motorists coverage. Family compensation had apparently achieved the huge success that it had because of the great sales effort Nationwide made and because of the liberalized two party feature. Interestingly, however, the similar but two party AD and D benefit had not been a great success for the companies who had chosen that marketing route. The author has located no evaluation of the Alternative Compensation Plan of the American Mutual Alliance. Its main difference from the Nationwide experiment was in the direction of greater benefits. It was hoped that the maximum limit of $12,500 would be sufficient to cover all but a small percentage of auto accident cases and would therefore attract pursuit of almost all claims away from the liability system.

Probably the most deeply researched and thorough proposal in regard to auto insurance of the post-war years was the Basic Protection Plan presented in 1965 by law professors Robert Keeton and Jeffrey O'Connell. It would require many months of continual reading to adequately investigate the propositions contained in this study and to explore the content of the public and industry discussions which this work has aroused. Only the briefest summary of the proposals, the reasoning behind them, and the reactions to the plan will be undertaken here.
During the summer of 1970, as has been indicated earlier, the state of Massachusetts enacted a compulsory compensation plan representing a partial approach to the Keeton-O'Connell proposals. Other states were considering similar proposals at the time of this writing (1971). No one could predict whether such plans as these, which in general grant automatic compensation of a limited amount to all accident victims, but retain fault liability for certain losses would be generally accepted or not. But the study itself and the legislative moves can be looked upon as the next logical development in society's gradual abandonment of the liability concept which has now been in progress for over fifty years (counting the abandonment of the indemnity provision and inclusion of the bankruptcy clauses of about 1920 as a beginning point).

Keeton and O'Connell's work reviewed the criticisms of the fault system and liability insurance that had been made over a period of over thirty years. They concluded that tort law as implemented through the automobile claims system was "ripe for reform." Their review was focused upon liability insurance as an instrument for meeting the financial needs of auto accident victims. The authors presumed that public policy in regard to automobile injuries was or should be devoted primarily to compensating the injured regardless of fault. They thus relegated the long-held opinions of a large number of persons to the realm of being uninformed or unconcerned about the problem. (The persons referred to are those who favored the proposition that each accident victim should bear his own loss unless he could prove that the accident was caused by another against whom he would have standing to
They quickly disposed of the pro-fault system argument by re-stating much the same positions that the proponents of compensation in the late 1920's and early 1930's had stated. Keeton and O'Connell were, however, able to defend their position with numerous case studies made during the 1950's and 1960's which substantiated their arguments. They were able to show, for example, that increased traffic traveling at greatly accelerated speeds had made the determination of fault much more difficult than it had been in 1930.

Keeton and O'Connell first reviewed the Columbia study of 1932 which had shown the automobile claims system to be inadequate for a number of reasons: (1) it was unjust in that the guilty often escaped bodily (hit-and-run) or through the difficulties of being shown to be in fact guilty. This left the innocent victim to pay his own expenses, (2) the system was slow and cumbersome; the waiting was a denial of justice, (3) the system was unfair; the insurance companies overpaid on small claims but could afford to pay less than the large claims were worth since the insurer could afford to "wait out" the claimant whose need of funds would often force him to make a too hasty and inadequate settlement, (4) the system was too expensive; one-half to two-thirds of the insurance premium was absorbed in the operation of the system. Keeton and O'Connell added a fifth contention: the system promoted dishonesty and disrespect for law by encouraging both guilty and innocent drivers to invent or construe events to suit their own preferred version of an accident.\footnote{15}

A number of the corroborating studies examined by Keeton and O'Connell took into consideration the improved position of the victim
because of the growth of social insurance, the wider ownership of expanded coverage liability insurance, private life and accident and health insurance including some of the expanded automobile coverages mentioned. But even with these benefits included, the plight of the victims especially in very seriously disabling, maiming, or fatal accidents revealed a serious social problem. For example, a 1951 study by James and Law concluded, in regard to the 1932 Columbia findings, that the same problems of "too little and too late" still existed.\(^{16}\) A 1962 study published by Professors Morris and Paul in the *University of Pennsylvania Law Review* certified that income received for those killed or seriously injured was often "insufficient to prevent great hardship for accident victims and their families."\(^{17}\)

The most extensive study cited was one conducted at the University of Michigan Law School under Professor Alfred F. Conrad. It was published in 1964. The Michigan study included over 86,000 accident victim cases drawn from Michigan residents. According to the study 23 per cent received no compensation from any source whatever; 63 per cent received no payment through the liability system and even of those seriously injured (about 10,000) 45 per cent received no tort settlement. Of those losses under $1,000, the victims were likely to receive more than their losses but of losses over $10,000, the victims were very unlikely to come close to being reimbursed even for their economic loss (which would exclude pain, suffering, and maiming). Of those suffering a loss of $25,000 or larger most got less than 25 per cent of their loss and none exceeded 75 per cent. (Keeton and O'Connell showed that the other surveys revealed "strikingly similar results in regard
to tort law in general." It was clear that the theory of tort law which maintained that full payment for economic and for psychic loss should be made was indeed followed more in the breach than in the observance. The Michigan study also showed that social and private insurance did not approach filling the balance of the need: "total reparation received by injury victims was approximately half their economic loss" of which the tort settlement produced 55 per cent. 18

This situation, of course, created grave financial consequences for victims and dependants, consequences which caused reliance upon public charity but more than this caused blighted lives. Professor Conrad and his co-authors also pointed out that "binding the wounds of the afflicted" was not enough, victims must feel that society has dealt fairly with them else future relationships with courts, lawyers, insurance companies and perhaps society in general might be poisoned thus creating a threat to maintaining a reasonably harmonious society.

Keeton and O'Connell noted that in the states having enacted compulsory liability insurance, the situation was only somewhat better. Numerous gaps were shown to exist in regard to providing a solvent defendant for all accident victims. They reiterated the fact that even if closing all the gaps were possible, the tort system would leave not only many "deserving" victims uncompensated or undercompensated, but that "undeserving" victims (those unable to prove fault) would be left as a problem for the general society.

The Basic Protection authors reviewed a number of operative compensation, arbitration, and absolute liability plans in use, for example, in Saskatchewan, Canada, in Britain, in other Commonwealth
countries, and in the Scandinavian countries. Various features of these plans and of non-operative proposals made in the United States were included in the final proposal which Keeton and O'Connell offered. Basic Protection, as the plan was named, provided for a combination of a basic compulsory compensation coverage to be supplemented by a voluntary negligence liability system (third-party coverage) and other optional (two-party) coverages to provide benefits (including a catastrophe coverage of $100,000) not available under Basic Protection.

Basic Protection benefits were to be provided through an extension of the principle of medical payments coverage. Under the compulsory feature all motorists would be required to purchase coverage which, as the result of an accident, would provide a $10,000 per person/per accident benefit for economic loss (excluding the first $100 of loss) incurred (excluding pain, suffering, disfigurement, maiming, etc. but including medical expenses, loss of income, and funeral expenses) while in, upon, entering or alighting from a vehicle or while being struck by an automobile. Motorists so insured would be exempt from tort action (except for the first $100) in regard to injuries suffered by others unless the economic loss exceeded $10,000 or unless the non-economic losses (above) exceeded $5,000. Tort actions for excess losses were preserved to be operated in much the same fashion as under the customary negligence system. Duplicate payments from other sources were to be eliminated by making Basic Protection excess insurance. The system was to be operated by the private insurance industry. Since insurers would be dealing with their own insureds on a two-party basis under Basic Protection, little controversy over the
evaluation of claims was expected. However, arbitration would be re-
quired for disputed cases. To close the final gap auto injuries which
occurred in connection with any uninsured auto would be assigned to
insurers on a pro-rata basis.\textsuperscript{19}

Keeton and O'Connell devoted over 200 pages of \textit{Basic Protection}
to a detailed draft statute incorporating and explaining the features
of their plan. This was followed by a discussion of the constitution-
ality of the proposed statute in which no formidable legal impediments
were foreseen. A concluding section was devoted to ways in which the
plan could be gradually implemented within states not desiring to ac-
cept the entire plan at the outset. In relation to the costs of the
plan, Keeton and O'Connell said, "The over-all cost of the new system,
including amounts paid as basic and added protection benefits, amounts
paid on tort claims, and amounts expended in administering claims of
both types, will be no greater, we believe, and may be substantially
less than the constantly rising cost of the present system."\textsuperscript{20}

Perhaps the best over-all brief review of the Keeton-O'Connell
and other recent proposals is contained in Kulp and Hall, \textit{Casualty In-
surance} (1968). This review considers the entire problem within the
context of society's needs and predispositions to action in regard to
tort liability versus the compensation system. The total insurance en-
vironment these authors state reveal a wide willingness and even eager-
ness to adopt far-reaching changes on the part of insurers and inter-
ested observers of the system. Kulp and Hall's work states that "the
insurer and legal press is full of suggestions" and that "the sum total
of all of them adds up to something very similar to the Keeton-O'Connell
proposals." However, they warn that the task of securing needed legislative approval could be very difficult and that the major and abrupt changes required by Basic Protection may be its greatest weakness. Kulp and Hall further state that much of the criticism is "bottomed on misinterpretation and misunderstanding—deliberate or unintentional." They express great concern that the elaborate care with which the plan was drafted may lead to its lack of accomplishment. 21 In this connection it should be noted that Keeton and O'Connell have written a popular version of their arguments called After Cars Crash (1967) 22 and have given numerous speeches and made many legislative committee appearances in connection with their proposal.

While convinced of the need for the thorough changes suggested by Basic Protection, with perhaps some additional modifications, Kulp and Hall state that insurers should implement as much of the plan as possible without legislation. But they strongly intimate that there is need for a continuing effort to study the whole problem of economic insecurity and social dislocations resulting from accidents due to all causes. A further thesis of their entire text is that education designed to awaken the sensitivities of the public and its officials to the imperatives and efficacies of action in regard to both the prevention of accidents and alleviation of their consequences is required. (This "total society" approach is perhaps also the greatest change to be observed between the insurance texts of the 1920's and those of the 1960's.)

The sensitivities of the insurers to this approach also seems evident in most of the literature of recent years. The best example
of this may be in the fact that insurers seem to be abandoning their age-old animosity toward compulsory insurance. Insurers seem to be more and more to be recognizing that the weakness of human nature requires more compulsion than that found in the financial responsibility laws. A good example of this kind of attitude, is that the Ohio Insurance Fact Book, which argues solutions and caveats in regard to auto insurance for about fifty pages, mentions nothing concerning the dangers of compulsory insurance.

Dean McAfee, Public Information Officer of the Ohio Insurance Institute, told this writer that the Institute unofficially favored the so-called Cotter Plan which includes a compulsory arbitration plan for disputed claims and alternative compensation of a limited amount for all accident victims.

Along with this change, which indicates a greatly broadened social viewpoint on the part of insurers, there is much further evidence of newly enlightened self-interest on the part of the industry.

This may be illustrated in the strategic areas of policy coverages, underwriting policies and practices, rating innovations, and critical claim practice analyses, as well as in massive attempts to educate the members of the industry itself and the public, based on a total problem approach, to insurer philosophy and practices. Some of these activities are based on defensive reactions. Largely, however, these changes are evidence of a growing desire to be dynamic in that the changes and discussions seem more and more designed to discover pressing needs before the public becomes widely aware of them.

For example, the industry revamped the policy coverages in 1939, in the absence of any particular public pressures toward compulsory
insurance or unsatisfied judgment funds, according to Insurance Professor C. A. Kulp, "principally due to a genuine wish to have the policy cover the average risk." That change included a liberalized application of the policy to most pick-up trucks used for non-commercial purposes and gave automatic coverage for utility trailers used with covered automobiles. Special endorsements, however, were still required in this pre-war period, in many cases, to provide coverage for some additional persons not included in the "omnibus" clause and to cover borrowed cars. It is instructive to note that in the post-war period insurers continued the liberalizing trend without significant outside pressures.

In 1956 the leading stock and mutual associations representing over 70 per cent of the industry introduced the liberalized Family Automobile Policy (FAP) and most of the rest of the industry followed suit in revamping their own policy forms. These policies provided coverage for almost all family-use without the necessity of special endorsements, thus granting coverage for situations in which the insured might have neglected to request special endorsements. The very close similarity of all policies permitted the companies to share experience and to develop a more comprehensible rating and coverage structure for the public and its regulatory agencies. Thirty day automatic coverage for newly acquired automobiles, coverage for temporary substitute automobiles and other non-owned automobiles except where regularly furnished for use of the insured, others using the vehicle within the scope of permission of the insured, and uninsured motorist coverage were all included. The "occurrence" basis for coverage was
substituted for the accident basis. This provided insurance for cumulative as well as for sudden events, e.g., the progressive efforts of repeated exposure to carbon monoxide.

Factors detrimental to sales including increasing rate levels, competition from mutual insurers and new compulsory insurance laws, led the Bureau stock companies to introduce a significantly new policy in 1959. The new Special Automobile Policy (SAP) was an attempt to overcome certain weaknesses of the PAP and to effect cost reductions both to forestall competition from independents and to retain support for private insurance. The new plan permitted cost reductions in the following ways: eliminating duplicate or redundant coverage situations; preventing the pyramiding of liability limits; eliminating coverage for unusually hazardous exposures (e.g., PAP automatically covered home trailers); writing a single liability limit rather than a per person/ per accident limit; substituting a six-month automatically renewable policy for an annually re-written style; and inseparably packaging liability, medical payments, uninsured motorists, and accidental death coverages.

The SAP also made merit-rating mandatory, introducing subclasses 0 to 6 which represented reductions of up to 20 per cent or increases of up to 100 per cent in relation to base rates which were calculated as in other policies upon territory, use, and operator ages. The surcharges or reductions were based upon convictions for traffic offenses and for accidents, excluding certain accidents in which the insured was relatively certain to be held innocent of negligence. This latter
feature was incorporated no doubt largely as a sales technique as merit-rating credits and debits given to such a large extent was widely regarded as actuarially unsound.

Though the SAP did reduce coverage most of the reductions were in the non-essential categories. The reductions were largely in the nature of eliminating benefits for which insureds would rarely feel the need, e.g., temporary substitute automobiles owned by residents in the insured family household, borrowed motorcycles or farm tractors, and non-owned automobiles owned by a resident of the insured's household were not covered under the SAP. These were probably over balanced by granting the single liability limit, e.g., permitting a $15,000 policy limit to be available for one claimant if needed rather than limiting one claimant to $5,000 and each accident limit to $10,000 as in the PAP and older standard or Basic Automobile Policy (BAP).

The industry retained the BAP (1939 style last revised in 1955) as a limited coverage policy for use for assigned risk policies, sub-standard policies, and for commercial risks. It was estimated that about 80 per cent of all auto insurance could be written on the PAP or SAP styles. It can therefore be seen that the industry was making a determined and imaginative effort to cater to the public wishes.

The segregating of risks into various policy coverage groupings is an underwriting technique to permit coverage limitation where considered desirable by underwriters. The soliciting agent or the underwriter, for example, could in cases of certain driving records offer only the surcharged SAP policy rather than the broader "flat" rated PAP.
Perhaps the chief development of the post-World War II period affecting underwriting was the burgeoning growth of companies offering rates below those of the stock Bureau companies. The companies specialized in and prospered because of low rates. Many of these firms had been in business long before the 1940's, for example, State Farm Mutual Automobile Insurance Company (recently billed as "the world's largest auto insurer") was organized before 1920 and Nationwide Mutual Insurance Company (formerly Farm Bureau) had been organized in 1926. But the stricter financial responsibility laws of the 1940's and early 1950's had created a mass market for insurance and companies such as these developed or refined their mass merchandizing methods to meet the demand. Typically these companies "skimmed the cream" of the insurance market, rejecting or cancelling or making ineligible for insurance a considerably larger percentage of applicants than the typical stock insurers.

The independents tended to drain off the business which produced lower loss ratios leaving insureds with higher loss potential to be insured by the more traditional insurers who were in turn forced to become "cream skimmers" also. Apparently no definitive study of the magnitude of this problem had been made by the close of 1968. State studies had been made in Virginia and Wisconsin which revealed that up to 3 per cent of insureds had had their policies cancelled by the companies within a two year period. Only one-fourth of those reviewed in the Wisconsin study reported difficulty in getting new insurance. This, however, did not take into account persons being rejected by
agents before a policy was written or told by their agents not to renew or to request cancellation. The writer's own experiences and observations have indicated a considerable amount of difficulty in securing and maintaining a market for the less desirable risks. Those over age 65 and under age 25 regardless of driving records often proved very difficult to place with an insurer charging "standard" rates. Minority groups and those living in certain areas of towns or cities as well as certain occupational groups often were on the undesirable or prohibited lists of insurers. 27

The difficulties experienced by these groups were often considered to be evidence of unfair and unwarranted discrimination. Often these persons had "clean" records but were lumped in with others having a considerable number of at-fault accidents or traffic conviction records. Many were forced to purchase insurance from "high risk" insurers or through assigned risk plan. Many doubtless drove without insurance. These concerns were often brought to the attention of political office holders. Eventually the problem was officially considered by members of the United States Senate. In 1967 and 1968 Senators Hart, Magnusen, and Moss included this concern in their demand for an investigation of the automobile and injury compensation system. As a result a special study was focused on non-standard or "high risk" insurers with an eye to determining the cause of the difficulties being experienced in maintaining an adequate market for those desiring to purchase insurance; included in the study was an investigation into the causes of numerous insolvencies among these insurers. 28 A brief comment on the findings
of this study will be considered in the concluding section of this chapter.

It can be noted then that pressures on the underwriting departments of the insurers, whose major task it is to provide a profitable client portfolio, became extreme. Public concern focused on whether the underwriting departments were fulfilling their function in a way consistent with the public interest. Internally insurers were faced with the necessity of actions necessary to survival. The crisis atmosphere produced actions often highly unpalatable to the insuring public. As pressures mounted it was evident that the underwriters and agency force would require new refinements in order to assure acceptance and retention of business. As a result company departments and insurer associations cooperated in developing greater rate refinements including age grouping, a greater number of rates based on residence and use, marital and dependent status, mass merchandising techniques for sales at reduced rates to employee groups, and greater use of rating based on the driver's own record, and guaranteed non-cancellable and renewable policies.

Each of these would require lengthy explanation but the purpose of this study can be accommodated by pointing out that these efforts were designed to create a more publicly acceptable private enterprise operation as well as to create a competitive product in relation to other insurers. But it must also be said that the numerous changes and the new complexities created a product very difficult to comprehend. Insurers attempted to meet this challenge with massive educational efforts of which the creation of the earlier mentioned Ohio Insurance
Institute is an example. Among the arguments presented by insurance information agencies such as the state and national associations was one concerned with promoting a "file and use" system (the system does not require approval of rates before they became effective) of state rate regulation. In this system the state promotes open competition as the best means of securing a rating system that is adequate for insurers, not excessive for the insuring public, and not unfairly discriminatory. Insurers have maintained that such a system serves the public interest and the industry much better than a system requiring prior approval of rates by public authority. Many articles in insurance journals and in insurance texts agree. It is pointed out that, for example, in New York where prior approval is required the rates are higher and the procuring of insurance more difficult and company loss ratios much higher than in California which has a "file-and-use" rating system.29

In the matter of claims philosophies and practices insurers too have been the subject of a great deal of close scrutiny. Previous comments in this paper have been directed to the difficulties of obtaining complete public satisfaction with a system based largely upon personal judgment exercised in an adversary setting. Claims personnel must always be aware of possible false and exaggerated claims, such as previous injuries being claimed for because of a recently occurring accident. In order to combat this and other human tendencies to overvalue a claim such as in regard to the "value" of pain and suffering, disfigurement, maiming, inconvenience, bereavement, and potential
income loss, the claimsman often must take on a cautious and even sus-
picious aspect. The claimsman must be at least partly attorney, phy-
sician, psychiatrist, salesman, and public relations expert.

The literature reviewed for the period 1947-1968 does not indi-
cate a major concern in this sensitive area. The crucial industry
public relations aspect is not prominent in the reviews of the claim's
function. Most published material is in the nature of explaining tech-
nical phases of claims adjusting. A significant departure from this
"nuts and bolts" approach is a study published in 1968 by Jerry S.
Rosenbloom (Ph.D. and C.I.U.). Rosenbloom lays strong stress on the
need for greater competence among field claimsmen (adjusters). He
calls for a re-orientation of the insurer thinking concerning the role
of the adjuster that would include much higher starting salaries and
greater opportunities for promotion in field adjusting. Attention to
this area he states can considerably reduce problems facing the auto
insurance industry. Rosenbloom cites the fact that company adjusters
are poorly selected, poorly trained, underpaid, and over-worked as im-
portant reasons for low quality work detrimental to insurer's public
relations.

Rosenbloom joined other observers in commenting that "the present
negligence system for settling automobile liability is riddled with
flaws." However, he concludes that the present system must continue
because, of "the various plans and proposals advocated to date, none
has achieved wide acceptance." In order to improve the present situa-
tion, Dr. Rosenbloom suggests upgrading the quality and status of the
claims adjuster, expanded use of advance payments with application of
rehabilitation techniques in cases of clear liability rather than exclu-
usive use of one final lump settlement.\textsuperscript{31}

Rosenbloom contends that, as the 1932 Columbia study and the 1964
Michigan study cited earlier indicated, insurers overpay small claims
and often delay evaluation of large claims. He advises that insurers
should not submit to the "blackmail" of claimant attorneys on small
claims but should discourage the artificial inflation of nuisance
claims could at first be costly in terms of investigation and litiga-
tion expenses and perhaps also in agent and public relations. Rosen-
bloom, however, feels that in the long run insurer and policyholder
gains would overcome these adversities especially if insurers would act
in concert on this matter.

Another claims area that has attracted attention is the area of
arbitration. It has been recommended that disputed small (perhaps up
to \$3,000 or \$5,000) cases be submitted to specially created arbitra-
tion boards supplementing the courts. These it is said would be less
expensive and faster than the normal court method, which by 1968
frequently involved delays for hearing of 3 to 5 years. Such a system
has been reported to be extraordinarily successful in Philadelphia
Municipal Court over a 10 year period. Juries and judges are replaced
by panels of three attorneys and the procedure is much less formal.
It is interesting to note that the Cotter (alternative compensation)
Plan which has won the endorsement of several insurers incorporates
compulsory arbitration of all claims up to \$3,000.\textsuperscript{32}
Footnotes - Chapter IX


5. Ibid., p. 503.

6. Ibid., pp. 504-5.

7. Ibid., pp. 496-502.

8. Ibid., p. 499.


13. Ibid., pp. 4-7.


16 Ibid., p. 40.

17 Ibid., p. 42.


20 Ibid., p. 295.

21 Ibid., p. 589.


23 The Ohio Insurance Institute, Ohio Insurance Fact Book (Columbus, Ohio: The Ohio Insurance Institute, 1970).


27 Ibid., pp. 428-36.

28 Ibid., pp. 426-7.

29 Ibid., pp. 457-60.

31 Ibid., pp. 168-78.

CHAPTER X

CONCLUSIONS AND PERSPECTIVES

What then are the best possible new emphases available to society in dealing with injuries caused by the automobile? What are the possible roles for insurers within these emphases? What suggestions does the history of the problem, as respects the role of insurers, offer in regard to the present dilemma?

It should be clear at this point that society has not dealt with the traffic accident problem in a satisfactory way. The past record indicates that too much reliance has been placed upon voluntary associations and upon private business, including the insurance industry, and its associations in the safety field. Balanced professional and comprehensive approaches to the traffic accident problem were largely non-existent through the years of this study. The weaknesses and reluctance of the states and the obvious interstate character of the automobile were largely ignored until 1966. Certainly the interest of the insurance industry in having the injury accident rate and costs trend lower was evident. But government officials erred in placing too great a reliance upon driver fault and the ability of insurers to overcome it. The interrelationships between driver, automobile, and highway were given little recognition.
Retention of the presently constituted fault system as a basis for compensation of accident victims because of its supposed deterrent effect upon careless or reckless driving seems unrealistic and undesirable. Numerous suggestions over the years have been made urging that ordinary negligence be abandoned as a part of the reparations basis for injuries. Liability would be based upon gross or wilful and wanton negligence, or reckless disregard for the safety of others, rather than the mere inattention or lapse of judgment occasionally befalling almost every driver.

It has been pointed out that the primary function of the police investigating an accident is to record evidence that allows the fixing of fault upon a driver. A major part of the time and function of the courts is to likewise fix driver fault in auto accidents. This activity is promoted, perhaps primarily so, by the auto insurance liability system. It tends to ignore vehicle and highway pre-conditions and contributes to unbalanced thinking in determining safety measures.

Though driver error certainly is a major cause of accidents there is little in accident research literature to suggest that retaining intact the present fault system for reparations is essential to defining and alleviating this error. There is much to suggest that experimentation with highly trained, professional teams investigating both driver and system failures would produce information useful for improving safety. Concentration on altering the habits of persons whose behavior is truly anti-social on the highway is clearly in order. Insurance companies and other segments of society interested in safety have long
advocated strict and well-enforced licensing laws backed up by education for new drivers and errant experienced drivers. A part of this program would include close attention to the problems of the drinking driver and the physically and mentally defective driver. But the lack of appropriations and the rather half-hearted attempts to carry out the National Traffic and Motor Vehicle Safety Act and the Highway Safety Act, both of 1966, does not bode well for the alleviation of these or other phases of the traffic accident problem.

But unless the alternative of greater public attention to the traffic accident problem is taken, the auto insurance problems seem destined to remain intolerable. Public officials have tended to leave important policing functions of the traffic safety movement to insurers. This may continue to remain so for the near future. Rather than to consistently educate, re-educate, or restrict by governmental action drivers requiring correction, public authorities often left to insurers the task of assuring financial responsibility for errant drivers and attempting to find just means of assessing adequate payments from them for insurance. Thus it could be remarked that the insurance problem is "more a problem in loss prevention and risk reduction" than in insurance systems.¹

A number of cross pressures on the insurance industry resulted from government policy and public attitudes. The ambivalent public attitude concerning maintaining fault in regard to reparations eligibility versus compensation for all has been thoroughly explored above. Another of these, also already noted, was the requirement that insurers furnish coverage for almost all licensed drivers. Most insurers on the
other hand wished to avoid writing insurance for poor risks or at least to write these at higher than usual rates. Thus the profit motive has clashed with the public service requirement. This was complicated by inflexible rating system regulations in many states and of course by the failures to enact and enforce adequate traffic laws. Drivers in states with compulsory insurance and prior approval rate laws found themselves heavily subsidizing drivers insured under assigned risk plans. Specially created "high risk" companies created to write business undesirable at usual rates found very rocky going. Seventy-three of 350 insurers in this category became insolvent over a period of several years prior to 1968.

Another phase of this problem of providing coverage for almost all drivers was the difficulty being experienced in regard to assigned risk plans.

The considerable attention devoted to these plans apparently stemmed from complaints concerning the "dumping" of large numbers of applicants into them. Insurers eager to avoid insuring questionable or undesirable risks had been accused of using these plans in cases where such action was not justified. The selective eligibility standards, the lower amounts of liability limits offered, the "trimmed down" version of policy style, the requirement of a full annual advance premium, the unavailability of uninsured motorists or medical payments coverages, delays in obtaining effective coverage, plus the stigma of being involuntarily placed in a high risk pool roused considerable resentment. The studies revealed that those under age 25 or over 65 were often placed in assigned risk plans despite a favorable driving history. In
certain states requiring advance approval of rates (and therefore with rates often found inadequate) especially in those which also had compulsory insurance use of the assigned risk plan was much accelerated. North Carolina had 17 per cent of all insureds in the assigned risk plan (1968 figures) and New York state 8.9 per cent while Ohio without compulsory insurance and with file-and-use rates the percentage was only .29 per cent. The former states also experienced high loss ratios on assigned risk plans with New York having over 120 per cent loss ratios for the years 1964 through 1967 while the Ohio loss ratio was just over 80 per cent and trending sharply downward. ⁴

In order to overcome one criticism of the plan the names of plans were changed to read: (the name of the state) Automobile Insurance Plan. This was intended to avoid some of the stigma attached to being an "assigned risk." But a number of more basic changes were required in line with shortcomings mentioned above. Canadian experience and similar proposals in the United States were suggested as agreeable models. The chief distinguishing feature of the Canadian plan involved an internally operated reinsurance pool (facility) which permitted companies to write a regular policy for nearly all applicants but to assign high risk coverage to the reinsurance pool at any time during the term of the policy facility and thus avoid mixing non-standard business with their regular portfolio.

The insurers are under strong public pressure to lessen their dependence upon cancellation and rejection practices and their use of high risk companies and assigned risk plans. But at the same time they are under pressure to keep rates low. Much of the public seems to fail
to make the obvious connection between insuring high risks and charging high rates. Better governmental safety measures are probably only part of the answer to this problem. Insurers have been challenged to develop keener discriminatory methods for establishing rates. It may be possible to develop the psychological and sociological data which will permit greater refinements than those presently in use. Insurers meantime will continue to face criticisms because rate levels are determined on somewhat arbitrary and artificial bases. On the one hand, insurers in response to the public's wishes and as a rule give more credence to individual driving records under merit-rating plans than is actuarially sound. On the other hand, rating and acceptance and rejection policies usually brand certain age groups (especially the young), occupation groups, and residents of certain areas as poor risks en masse. Some evidence of progress in the younger ages can be noted as recent years have witnessed granting of discounts from the general high youthful driver rate level for increased driving experience. However, artificial distinctions remain, such as the automatic reclassification to "mature adult" when the driver reaches twenty-five.

It seems quite apparent that insurers need to educate the public to the reasons for many of their policies and practices if they are to improve their public image. Until perhaps the 1950's or 1960's the level of public interest in insurer operations was so low as to permit the industry to remain quite conservative and non-communicative.

Perhaps one of the strongest recommendations for the private auto insurance system is its new emphasis on total society needs and desires in regard to insurance. This includes advertising designed not just to
sell insurance but directed to policyholder education and participation campaigns. The latter two includes invitations by Traveler's Insurance to the public to inquire about insurance procedures without having the firm in turn make a sales attempt; it also includes a policyholder participation program operated by Nationwide Insurance in which local, district, regional, and company-wide meetings of policyholders are conducted by company personnel to involve policyholders in management decisions.

Another outstanding example of educational efforts are those conducted internally with industry personnel. Education and training programs such as that of the Society of Chartered Property and Casualty Underwriters (CPCU), founded in 1947, include a broad range of topics designed to emphasize the social service as well as the usual business aspects of insurance. Two recent articles from the CPCU Annals are of note in this regard. Arthur E. Parry, writing in the March, 1969 issue pointed out that auto insurers are effectively attacking their major problems but are still failing to communicate adequately to the public what these problems are and what positive steps are being taken to solve them. Professor Herbert S. Dennenberg in a June, 1970 article, expresses the concern that no "cute" compensation method such as that based wholly or partly on a no-fault approach will make the auto insurance system work satisfactorily. He calls for the proposed solutions discussed above "far too modest." New methods of loss prevention, consumer education, insurance marketing and insurance regulation are called for. If this be so, and this writer believes this study substantiates Professor Dennenberg's position, it is obvious that insurers
then, bound by their total social environment, will be required to further utilize and cooperate with social forces outside the industry to deal with what Dennenberg refers to as the legal, medical, and insurance substructure sources of the auto insurance problem.⁶

A number of the citations above are from the massive $2 million study of the automobile insurance industry begun by the national Department of Transportation (DOT) in 1968. Congress had authorized this study as a review of state regulatory performance since the enactment of Public Law 15 in 1947. (It will be recalled that this law permitted the states to continue to exercise primary regulatory functions though recognizing the right and duty of the federal government to oversee such regulation.) Nineteen separate publications have been made as a result of the DOT study. A review of the findings of each of these publications is beyond the scope of what is undertaken here, but this writer did undertake a perusal of several of the more far-reaching of them. The studies examined offered little serious criticism of insurer operations as such under the present negligence system. But the negligence system itself came under strong attack and an important recommendation for change by DOT.

A resolution was sponsored by the Nixon administration early in 1971 to declare it to be "the sense of Congress" that the states enact no-fault legislation.⁷ The resolution if adopted would be in the nature of a suggestion to the states at least to reduce the role of fault in the reparations system. Details of state adopted changes could range from complete abandonment of the liability system in favor of a
compensation approach to a partial approach such as the 1970 Massachusetts plan.

The resolution revitalized the controversy over liability versus compensation which had fitfully raged for almost half a century. The major insurer trade associations were split in their attitude on the proposal.

On the one hand the American Insurance Association (traditional stock insurers formerly associated under the title National Bureau of Casualty and Surety Underwriters) "fully endorsed" the proposal. Two other large segments of the industry, the National Association of Independent Insurers (NAII) and the American Mutual Insurance Alliance (AMIA) vigorously opposed no-fault legislation. These latter groups were joined by organized trial lawyers in maintaining the nearly half-century old argument that relieving negligent drivers of civil liability would be unwise policy since it would eliminate an important deterrent to carelessness.

Others favored direct national legislation to end use of the liability system entirely. A Department of Transportation (DOT) squabble over a federal mandate in this area had apparently developed in late 1970. Richard J. Barber, director of the 1968-1970 DOT study assailed the state approach advocated by the Nixon Administration as "pale, anemic, and lacking in substance." DOT, he said, had been forced into a near rout by "unprogressive, unresponsive forces in the insurance industry" in a series of White House conferences which ultimately resulted in the state leadership proposals.
This latter charge leads to an examination of the attitude of insurers on the suggested change. The declining market situation of the AIA companies, including the resultant escalating loss ratios from adverse selection, and their inability to reverse the trend perhaps has been most responsible for their surprisingly favorable position on federally directed compulsory no-fault insurance. One observer points out that these insurers are long-time leaders in group accident and health insurance. These insurers believe that the no-fault system will readily lend to the same group sales techniques in auto insurance as are employed in accident and health coverages. A new basis for writing and servicing insurance apparently is visualized that will reduce insurance costs, improve public relations, and void the most unfavorable features of the AIA's present agency relationships.

In this same category another of the DOT studies concerned itself with the possibilities of applying mass merchandising techniques to the automobile insurance field. The authors, Spencer Kimball and Herbert Dennenberg, noted that no insurer was performing such an operation successfully but that the savings in sales and servicing costs promised to be considerable if it could be successfully instituted. They noted, however, that regulatory barriers against this sales method were maintained by insurer pressures on legislatures and insurance commissioners. The industry was said to resist experimentations because of its desire to retain stability. Kimball and Dennenberg stated that there were numerous indications that insurers were strongly resisting changes which were "promising techniques" and "in the best interest of the public" in favor of avoiding a "disorderly marketing situation."
A number of important changes then seemed to be indicated by problems related to auto insurance and the traffic accident problem. It seemed evident that these changes in the role of government and within the industry would be made within a legal context of compulsion either through new enactments of direct compulsory insurance or through gap-closing measures within financial responsibility laws. The society seems to demand that the automobile insurance field become a form of social insurance. As such, most important aspects of the field will be even more greatly affected by legislation and the entire field would remain subject to intense scrutiny. It seemed probable that if the strong movement toward no-fault insurance continued, the tendency to closely regulate and restrict insurers would become even more pronounced. Despite adverse operating conditions in the auto insurance industry for most all companies, the insurers continue to regard government action even if directed at improved operating conditions as most unpleasant. Most insurers continue to believe that government traffic safety actions will retain public support for and restore profit possibilities within the fault insurance system. Insurers apparently are greatly divided over whether the fault system is more conducive to private insurer operation than is a no-fault system.

The future of the industry then may well hang upon the level and success of government actions in regard to traffic safety—actions which the industry can support but not replace. Unless the problem of deaths and injuries is brought under more effective control, the trend of the past forty years to greater governmental restrictions will be even more
accelerated. Many would argue that this would sharply curtail innovations in insurance product and service that have characterized the largely open and uncontrolled competitiveness of the past.

Massive gains in regard to the traffic accident problem do not seem to be in the immediate offing as the society seems unwilling to devote the needed resources to the problem. For that reason, insurers will probably need to emphasize and increase their education and public relations work as well as their innovative efforts internally if they are to meet the insistent demands for change.

One may wonder why insurers wish to continue to write automobile insurance in view of the fact that underwriting losses have been so severe in recent years. This may be explained on a company level on the basis of continued control of assets available for other profitable activities and in general because of the importance of the automobile line as means of obtaining sales opportunities in other insurance areas with the automobile client. Therefore, one may expect strong pressures from the agency forces and company management as well toward retaining this important entree to other sales.

It may be concluded that the insurance industry has been required to serve as an important element in social adjustment to the automobile despite its frequent reluctance to recognize this role. Perhaps the most severe criticism of the industry is its tendency to support an antiquated legal system. It seems evident to this writer that insurers both before and since 1930 should have actively supported a modified fault system. Their failure to do so had made them seem ultra-conservative despite the numerous and often imaginative public service
features introduced in its product, pricing, underwriting and claim procedures. Further, it is this writer's opinion that the industry in its adamant defense of the fault system helped to perpetuate a social and economic environment hostile to its own interests and that of the public. Having so long retained the fault system, society is now finding it extremely difficult to make modifications in this direction. But it seems likely that insurers will be required to accommodate themselves at last to new rules toward which society has been tending for over half a century.

It seems likely that the public sense of justice will not permit complete abandonment of fault in connection with reparations. Liability insurance will therefore apparently continue to exist for some time to come. It also seems highly unlikely that America will go the route of some European countries, that is, of an absolute liability for injuries to others which is imposed upon each automobile owner for any accident in which his vehicle is involved. Comparative negligence may become more common in which vehicle operators share losses based upon degree of blame affixed for each driver according to his contribution to the causes of the accident. But given the increasing predilection of the society for insurance coverage and payments for all circumstances, fault seems likely to continue to recede from the picture. However, judging from European and British experience auto liability insurance will remain in existence regardless of the possible adoption of a national health and accident insurance program.
Insurance, of course, makes a very real contribution to society and to the well-being of individuals within it both materially and psychologically. Though voluntary purchase of insurance has grown enormously in the period of this study strong buyer resistance among a large portion of the population has been evident also. This study has detailed a number of sources of conflict which doubtless play a significant part in determining sales resistance. Industry has the duty of removing or reducing these conflicts insofar as possible and of furthering the education of the public to the necessary requirements involved in establishing and working within a contract of insurance. Insofar as this is done, given the advances suggested in other areas, the private insurance industry can remain private, making likely both greater variety and greater flexibility within the services available to the public. Further than this and of greater significance, this writer believes, private insurance promotes greater individual responsibility and thus a more viable democracy than a government operated system. Such a system may result if society in general and the insurance industry do not meet the evident demands being placed upon them. Private insurance calls for voluntary cooperation by members of the public and the making of contracts in utmost good faith which then must be lived up to. The characteristics required in the successful operation of private insurance are in this respect the same or very similar to those required to maintain a viable democracy. This individual development and responsibility might well be significantly lost in a
government operated automobile insurance system especially one based strictly on a compensation basis as in workmen's compensation or Social Security.
Footnotes - Chapter X


8 Ibid.

9 The declining market situation seems to be based primarily upon sales costs. The former Bureau firms cling to the traditional agency arrangement. The agent typically represents several firms and controls the placing of business. While a company contracting with an agency of this type can refuse to renew either single policies, groups of policies, or the entire business of the agency, it cannot assign a new agent to a block of business without purchasing the entire block of business since it is the agent who "owns the renewals." The bargaining strength of these agencies is such that the companies have been forced to keep commissions high, no doubt too high in relation to possible continued business success. Nor have the AIA companies been able to introduce aggressive sales methods.
The nature of this study required a broad review and heavy reliance upon secondary sources. The author located no adequate history of either the highway safety movement or the auto insurance industry. It was necessary to construct an outline history of these two areas in order to determine the effectiveness of automobile bodily injury liability insurance as agency for social adjustment to the automobile.

Time limitations prevented the writer from exploring at any depth many interesting aspects of this diverse and complex subject. The student of history would perhaps be most interested in the extent of the safety problems created by the automobile as they were recognized and attacked by public and private agencies. Indications are that a thorough exploration of the highway safety studies of the national Bureau of Public Roads would prove rewarding though this writer found Ohio's records in this area very meagre and almost useless as a measure of the interest in or effectiveness of highway safety programs. The records of various business and professional associations, e.g., medical, optometric, highway and auto engineering associations, with an interest in highway safety as well as of professional safety associations, e.g., the National Safety Council would also prove to be a
fruitful source for further study. A study of the involvement of various individuals active in the highway safety movement should prove instructive. For example, Daniel P. Moynihan, Senator Abraham Ribicoff, and William Haddon, Jr. have had a continuing interest in this problem.

It was possible to give only very brief treatment to the development of a scientific approach to highway safety. Indications were that an in-depth study of how and why society long remained attached to unscientific approaches to highway safety would be instructive, and interesting. The pervasiveness of various safety myths coupled with general apathy to scientifically controlled studies was evident in all the major works cited and could be further pursued in the types of documents and other sources cited in the selected bibliographical listings below.

Insurance literature is replete with references to highway safety. But its bias is quite evident in the direction of a driver fault orientation. This fact suggests that studies directed toward exploring the overall effect of bodily injury liability insurance, e.g., the fault system, on the safety movement are in order. One approach to this effort could be based at least in part upon a thorough review of safety efforts of insurance association and individual insurers particularly those mentioned in the study.

In the area of insurer operations this study suggested enormous opportunity for deeper investigations into the various functional areas of automobile insurance. As this study indicates, public attention has
only in recent years come to be focused on the philosophies and practices of insurer policy coverage, underwriting, rating, and claim functions. The limitations of this study have not permitted in depth studies of any of these areas. The study, however, has suggested that further insights into social adjustments to the automobile (and thus perhaps into social adjustment to technical change in a more general way) can be gained from an in-depth study of these insurer experiences.

As the bibliographical listing suggests, this writer used a number of in-house publications and departmental reports of the Nationwide Insurance Companies. Though certain of the information was technical in nature, much of the material from The Underwriter and the reports of the Policyholder Advisory Committees provided useful insights into the insurers problems in providing the quality of service demanded by the public while at the same maintaining a profit-and-loss situation consistent with company objectives. A number of other companies were contacted and company histories and statements of philosophy were made available to the writer. Doubtless, if time and the scope of this paper had permitted, other in-house publications, reports, and discussions could have been used in making a detailed examination of the history of the public interest and insurer rating, claims, and underwriting practices.

Certain journals and periodicals were very useful in judging the response of insurance people to the public interest, especially professional journals such as the Proceedings of the Casualty Actuarial Society, the Proceedings of the American Institute for Teachers of
Insurance, and the Annals of the Chartered Property and Casualty Underwriters. The first two of these began regular publication before 1925 and the latter began in 1947. Among insurance periodicals devoted to more general topics this writer found the Journal of American Insurance of particular value in examining the industry's public interest attitudes and practices. The writer also frequently consulted The Spectator (Fire and Casualty Edition), Best's Insurance Reports and Best's Insurance News (both began publication in 1899), The National Underwriter and The Weekly Underwriter. A monthly indexing service for these and several other insurance journals was established in 1964. For the earlier years indexing was done by only a few of the journals and in each case only for their own publications.

A formal selected listing of documents, books, and periodical articles that were of direct use in this study follows. These items are not intended as an exhaustive listing of available sources since this would seem to be nearly impossible for one person working alone. The writer does believe that it represents a useful sampling of material appropriate to defining the scope of the traffic accident problem as it has affected insurers. The list also hopefully provides a useful sampling of insurer text and periodical materials from the viewpoint of insurers responses to the social aspects of the traffic accident problem.
Public Documents


The Annual Reports of the Ohio Department of Highway Safety, 1954-1963. Columbus, Ohio. (mimeographed)


Unpublished Materials


Interview with George Hildebrand, Chief, Rating Division, Department of Insurance, State of Ohio, February, 1971.

Interview with Frank Laderer, Director of Safety, Nationwide Insurance Companies, Columbus, Ohio, October, 1970.


Books


Crane, Frederick G. Automobile Insurance Rate Regulation: The Public Control of Price Competition. Columbus, Ohio: Bureau of Business Research, College of Commerce and Administration, The Ohio State University, 1962.


DeSilva, Harry R. Why We Have Automobile Accidents. New York: John Wiley and Sons, Inc., 1942.


Maher, John J. Mind Over Motor. No place of publication given; published by the author, 1937.


Periodical and Newspaper Articles*


*This listing does not cite articles appearing among selected articles in books listed above.*

"It All Began Fifty Years Ago." Traffic Safety, LIXI (May, 1963), 9, 41.


PERIODIC MOTOR VEHICLE INSPECTION

STANDARD 1
Each State shall have a program for periodic inspection of all registered vehicles or other experimental, pilot, or demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or increase the severity of accidents which do occur, and shall require the owner to correct such conditions.

STANDARD 2
Each State shall have a motor vehicle registration program, which shall provide for rapid identification of each vehicle and its owner, and shall make available pertinent data for accident research and safety program development.

STANDARD 3
For the purposes of this standard a motorcycle is defined as any motor-driven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride within an enclosed cab.

STANDARD 4
Each State, in cooperation with its political subdivisions, shall have a driver education and training program.
STANDARD 5

Each State shall have a driver licensing program: (a) to insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive.

STANDARD 6

Each State shall develop and implement a program to achieve uniformity of traffic codes and laws throughout the State.

STANDARD 7

Each State in cooperation with its political subdivisions shall have a program to assure that all traffic courts in it complement and support local and Statewide traffic safety objectives.

STANDARD 8

Each State, in cooperation with its political subdivisions, shall develop and implement a program to achieve a reduction in those traffic accidents arising in whole or in part from persons driving under the influence of alcohol.

STANDARD 9

Each State, in cooperation with county and other local governments, shall have a program for identifying accident locations and for maintaining surveillance of those locations having high accident rates or losses.

STANDARD 10

Each State, in cooperation with its political subdivisions, shall maintain a traffic records system. The Statewide system (which may consist of compatible subsystems) shall include data for the entire State. Information regarding drivers, vehicles, accidents, and highways shall be compatible for purposes of analysis and correlation. Systems maintained by local governments shall be compatible with, and capable of furnishing data to the State system. The State system shall be capable of providing summaries, tabulations and special analyses to local governments on request.
STANDARD 11

Each State, in cooperation with its local political sub-divisions, shall have a program to ensure that persons involved in highway accidents receive prompt emergency medical care under the range of emergency conditions encountered.

STANDARD 12

Each State in cooperation with county and local governments shall have a program of highway design, construction, and maintenance to improve highway safety. Standards applicable to specific programs are those issued or endorsed by the Federal Highway Administrator.

STANDARD 13

Each State, in cooperation with its county and local government, shall have a program relating to the use of traffic control devices (signs, markings, signals, etc.) and other traffic engineering measures to reduce traffic accidents.

STANDARD 14

Every State in cooperation with its political subdivisions shall develop and implement a program to insure the safety of pedestrians of all ages.

STANDARD 15

Every State in cooperation with its political subdivisions shall have a program to insure efficient and effective police services utilizing traffic patrols: To enforce traffic laws; to prevent accidents; to aid the injured; to document the particulars of individual accidents; to supervise accident cleanup and to restore safe and orderly traffic movement.

STANDARD 16

Each State in cooperation with its political subdivisions shall have a program which provides for rapid, orderly, and safe removal from the roadway of wreckage, spillage, and debris resulting from motor vehicle accidents, and for otherwise reducing the likelihood of secondary and chain-reaction collisions, and conditions hazardous to the public health and safety.
NATIONWIDE'S PROGRAM IN TRAFFIC SAFETY
H. M. Pontious
Director of Safety
October, 1957

At the time of inception of the Safety Department some 20 years ago, management said - "We've now reached the point where we are spending a million dollars a year on accidents after they happen; it's time now to spend some money to prevent these accidents before they happen."

Since that day, our Companies have made a very real contribution to the solution of the traffic safety problem in many ways. Programs have been designed and promoted with the welfare of our policyholders in view, and can be divided into two areas. First are those programs and activities directed to our policyholders, and second are those designed to create a safer environment for our policyholders.

Programs Directed to Policyholders

The Safe Driver Award Plan relating to company car drivers, district sales managers and agents of the Companies was designed to effectively involve management and all persons down the line in an effort to reduce automobile accidents with the entire group. Since the policyholder thinks of the company pretty much in terms of its representatives in his community, their habits and practices become quite important. Certainly, if their habits and practices are not exemplary, then the policyholder tends to shrug off any safety efforts directed to him with "Why don't they practice what they preach?"

At the initiation of this program, we were involved in one chargeable accident each 27,000 miles. The record has improved to a point where we are involved in one chargeable accident in approximately each 190,000 miles.

Honor Awards to policyholders employing the "recognition and pride" appeal were effectively used by many of our agents in years past. The value of the Honor Award prepared and presented by the agent directly to his policyholder is regaining popularity and has proven a valuable tool in promoting safe driving.
Literature beams at a variety of problems relating to the reduction of traffic accidents has been developed and distributed to policyholders and others through the agency force, driver education classes, law enforcement people, sponsor groups and others. Premium cell stuffers beams at the traffic safety problems have been mailed to policyholders with their billings.

Articles and stories in our Company and sponsor publications have made a contribution and are being continued. Likewise, safety promotions with the Policyholder Advisory Councils and the Advisory Committee of Policyholders continue to present interesting and challenging opportunities.

Safety Department assisted in the development of the Youthful Driver Improvement program in Chester County, Pennsylvania, 43 years ago and more recently worked with Underwriting in the development of the program Company-wide.

In the early years of high school Driver Education, Safety Department formed and conducted Skilled Driver Clubs for the youth of Farm Bureau policyholders in many counties in Ohio. Not only was this a valuable contribution to traffic safety but it stimulated driver education in schools throughout the state.

Working through the County and State Farm Bureau Co-op Associations, Safety Department arranged for the appointment of County Co-op Safety Directors and conducted training schools for them. Incidentally, this work continues on as a decentralized operation through the Regional Field Underwriters.

Safety Department initiated and developed the Employee Safety Committee which function in the Home Office and in most decentralized Regions. In the early days, attention was directed largely to the prevention of accidents on the job. As the traffic problem increased, more and more attention was given to off-the-job safety, including traffic safety.

Safety Department has been instrumental in the production of an outstanding traffic safety film entitled "A Closed Book" by Willing Studios of Chicago, Illinois, which was used initially with policyholder groups. Because of popular demand, use has been expanded to the public, the armed services, and groups of all types.
A resume of the Company's traffic safety program would not be complete without emphasis on the excellent safety work done with insured fleets by the Field Underwriters in the Regions. Safety Department has cooperated by putting on a special safety program in cooperation with the Field Underwriters on many occasions.

Traffic Safety Demonstration Programs have been conducted before Regional Office employees and guests on a number of occasions. This has been a valuable educational experience to employees who have either never seen the program or have no real concept of just what the Companies are doing in this regard with high school, college and other groups.

Programs to Create a Safer Environment

A. Those Conducted by Company Personnel. Traffic safety demonstration programs with high schools, colleges, armed services and other groups have been conducted since 1938. To date, some 6,000 programs have been given before some 4,000,000 people, with demand in excess of our facilities.

Special Teacher Training Courses at colleges and universities involve from one-half day to a full day during which teaching techniques and practices are presented to future Driver Education instructors. The Traffic Safety Demonstration program is presented as a future teaching technique. This sets the stage for the company to be invited to put on such a program in the high school where these folk will be teaching in future years.

Safety Department was instrumental in calling and sponsoring two conferences of safety educators in Washington, D.C. to establish standards for Adult Driver Education Courses. As a result, the National Conference on Driver Education held at Lansing, Michigan, adopted the standards which were developed in our Washington meetings. This work has led to the licensing of Commercial Driver Training Schools in Ohio and elsewhere.

Safety materials have been developed and distributed widely to assist the public in establishing the need for Driver Education and give guidance as to how courses may be set up in the local schools. Talks have been given before groups across the country in the promotion of Driver Education.
Youth safety activities have been developed and are conducted by the Companies through the Supervisor of Youth Programs in which members of the Future Farmers of America Chapters, 4-H Clubs, Future Homemakers of America, scouts and other youth groups are enlisted in a program of eliminating accident hazards. These programs teach our youth to recognize and determine what to do about hazardous conditions. In recognition of the fine work of these several thousand youth (who inspected several thousand properties, eliminating hazards found therein) the Company sponsors the outstanding youth from the several states on a trip to the National Safety Congress where they participate in the Youth Sessions with other youth from across the nation.

Youth Conferences with Farm Bureau youth, FFA and others are held annually.

The broad activities promoted by the Supervisor of Fire Safety have had beneficial implementation in the field of traffic safety and will become increasingly important in this regard in the months ahead. Plans are being carried forward whereby Volunteer Fire Departments will devote much attention to getting equipment and volunteer firemen to and from fires with maximum safety.

The Volunteer Fire Safety Survey program which involves the mapping and cataloguing of all rural properties served by the fire departments prevents false runs to the wrong address (and the resulting mad scramble to get to the right one).

Quite a number of radio and TV programs have been presented or participated in by Safety Department Staff. Materials prepared or participated in by Safety Department Staff. Materials prepared for these media have had broad acceptance; excellent publicity and public education has been attained.

The Safety Film Library maintains 268 prints of 100 different films for free booking to employees, policyholders and the general public.

B. Those in which safety personnel participate with other interested groups. National Safety Council sectional activities include the Traffic and Transportation Conference (Committee on Speed) Industrial Conference (Small Business and Association Committee) School and College Conference, Farm Conference (Executive Committee), National Boy Scout Good Turn Safety Program (Committee).
Safety Department Staff is a member of the American Society of Safety Engineers and participates in national and state traffic safety activities.

Safety staff members working in and through the state safety council in Ohio, Pennsylvania, and West Virginia have given opportunity to provide assistance in the development of traffic safety activities throughout our operating territory.

Traffic safety exhibits and safety demonstrations have been conducted at state and county fairs throughout the regions.

Safety personnel developed a Farm Safety Conference, the pattern of operation of which has since been adopted by the National Safety Council and has been expanded nationally. Similarly, the Company developed the youth session of the National Safety Congress held annually in Chicago in October.

All these and many other activities give some indication of the valuable contribution which Nationwide has made to the solution of the Traffic Safety problem nationally. Such safety activities have paid tremendous dividends when we consider that—had the 1935 death rate on our streets and highways continued, in 1956 we would have killed an additional 54,000 people and injured nearly 2,000,000 additional persons, not to mention the billion dollars or more additional property damage which would have occurred. Despite this excellent progress, much yet remains to be done.

Management at Nationwide has a continuing awareness that success in any enterprise, requires that waste in all forms be reduced to a minimum. Therefore, no practical action should be omitted which can be expected to reduce accidental injury, death, destruction or disruption of morale. It is hardly necessary to add that the principles and objectives of our Companies demand that "in service with people" we shall always make concerted effort to prevent accidents that will result in economic loss and try to spread the risk and the cost of losses over all those subject to them.