# Highway Safety Under Differing Types Of Liability Legislation

Ross D. Netherton*

Included in the legacy which Martha ("Mother") Shipton left to the world upon her death in 1561 was the prophecy that "Carriages without horses shall go, and accidents fill the world with woe."[1] The twentieth century has seen the fulfillment of this prophecy, and, in a certain sense, observed that fulfillment by recording the one-millionth automobile accident fatality on December 23, 1951.[2] This anniversary was celebrated despite the best efforts of safety organizations, law enforcement agencies, legislators, insurance carriers, automobile organizations, and the general public to reverse the rising trend of accident statistics. As part of the fight to make the highways safe, great stress has been placed upon the contribution which legislation, both civil and penal, can make toward the ultimate solution of the problem of automobile accidents. The purpose of including traffic rules in the criminal codes of the state law is obvious. In precisely the same way that other criminal laws deter other types of conduct dangerous to the public safety, motor vehicle traffic regulations compel the usage of driving practices which are thought necessary to decrease the likelihood of accidents. This deterrent effect upon dangerous driving is clear in theory and is becoming steadily more effective in practice as the science of traffic law enforcement progresses.[3]

There is, however, need for attention to the civil penalties which have been created to strengthen the defense of the community against dangerous driving. Several types of legislation have been proposed, and annually there is competition among them for adoption by state legislatures. Inevitably discussion of these proposals turns, in varying degrees, to the good that such laws, if enacted, will do toward the solution of the problem of automobile accidents. Underlying each, therefore, is the assumption that civil penalties or administrative procedures have a deterrent effect upon dangerous driving.

Yet the deterrent effect which these civil penalties have upon dangerous driving is almost never analyzed and explained. Everyone assumes that deterrents are at work in such laws, but no

* Legislative Counsel, American Automobile Association; Member, American Bar Association; Member of National Committee on Uniform Traffic Laws.

[1] Bartlett's Familiar Quotations, (N.Y., 1940), p. 940.

[2] National Safety Council.

[3] Halsey, *Accident Prevention vs. Accident Cause*, 36 J. Crim. L. & Criminology 349 (January 1946).

one says how or to what extent they are effective. It would seem that the legislative air would be considerably cleared if the various types of civil procedures and penalties were compared and evaluated with respect to their effectiveness in this respect. The foregoing parts of this symposium have dealt with tort law practice and legislation which operates to modify the common law rule of liability in cases of injuries due to automobile accidents. It is fitting, however, to recognize that the "social problem" of compensation for accident victims is ultimately due to the fact that certain types of behavior cause accidents, and the proportions of the accident victim compensation problem are directly correlated to the extent with which accident-causing behavior is widespread. In this way the problem of deterring dangerous driving practices becomes a matter which should command the most thoughtful attention of all who deal with the law.

THE ROLE OF HIGHWAY SAFETY IN THE LAW OF TORTS.

At the outset it should be noted that as the law of torts has developed it has seemed to become less and less concerned with the matter of *public* safety. In its Anglo-Saxon origin, the common law rule fixing liability for civil wrongs expressed the undiscriminating impulse for revenge which naturally came from the victim, and also provided a rough-shod deterrent upon dangerous activities which arose from the same fear of revenge.[4] The tariffs of payments prescribed in the Anglo-Saxon dooms served the dual purpose of working for the preservation of order in the community and the compensation of the person wrongfully harmed. With the development of effective government, however, this dual concern of tort law has naturally disappeared, and the rules of civil liability have become increasingly preoccupied with making whole the tort victim's losses. This tendency has been encouraged by the widespread use of insurance and has led most of modern thinking about tortious conduct to center around the question of how the victim's losses should be shifted from his own shoulders to a broader base. Nowadays nothing is said in court decisions about the rehabilitation of the tort-feasor as a result of his having to pay for his negligence. And even the recognition of moral wrongdoing as a factor in determining liability is, in these times, under heavy assult in deference to "the social problem" which accidental injuries are said to create.[5] The first point to no-

[4] POTTER, AN HISTORICAL INTRODUCTION TO ENGLISH LAW, (London, 1932), p. 295; Wigmore, *Responsibility for Tortious Acts: Its History.* 3 SELECT ESSAYS ON ANGLO-AMERICAN LEGAL HISTORY, p. 474 (Boston, 1909).

[5] See for example: James, *Accident Liability,* 55 YALE L.J. 365 (February 1940); *Automobile Accident Compulsory Insurance Reconsidered,* 1953 ILL. L. FORUM 263; McNiece & Thornton, *Automobile Accident Prevention and Compensation,* 27 N.Y.U.L. REV. 585 (1952).

tice, therefore, is that in the process of its development, the law of torts apparently has relegated to a very minor role that portion of its influence which operates to prevent the occurrence of dangerous conduct or deter its repetition. Most people, lawyers and laymen alike, today think of safety as a "matter for the police."

This tendency can be plainly seen in the history of automobile accident litigation. This first fatal automobile accident is said to have occurred in 1896.[6] Looking at events in the light of the times, it is not unexpected that the law continued to be preoccupied with the job of determining which party should bear the cost of the injury and making the injured plaintiff whole. The fact than an automobile was involved was not particularly significant. The horseless carriage appeared analogous to the horse-drawn carriage; the procedure most suitable for determining civil liability in either case appeared to be the same; there was no reason to read into the case a significance beyond what appeared from a surface inspection. If the negligent defendant happened to be chastened by having to pay damages for his action, so much the better for the community in which he would continue to live. But no one seriously contended that the rehabilitation of the tortious wrongdoer was a concern of the law of torts.

This leads to a second observation about the common law background of the types of legislation which has been applied to the problem of automobile accidents and which are the subject of this symposium: There has been no serious attempt to create a rule of absolute tort liabilty for cases of automobile accident injury and property damage. This is true despite the fact that in other types of tortious conduct, the rule of absolute liability has been followed by the courts.[7] Here one thinks of the cases involving dynamite, electricity and gas, and certain activities regarded in the light of the times as "ultrahazardous" or "inherently dangerous." Yet early in the process of developing doctrine applicable to automobiles, the courts rejected the notion that a driver's liability should be absolute, and, instead, based their reasoning on the assumption that liability should be measured by reference to the standard of due care under the circumstances.[8] Liability for fault continues to be the rule today where automobiles are concerned, despite the fact that statutory strict liability has been specifically extended to many types of industrial accidents, railroad and aircraft accidents, and situations involving foods, drugs, and liquids.

The tendencies just described present a contradiction when placed in the context of modern common law automobile accident

[6] N.Y. DAILY TRIBUNE, May 31, 1896. Cited in Kane, J. N., *Famous First Facts*, (N.Y., 1950).

[7] PROSSER, TORTS, pp. 446, 466. (1941).

[8] Lewis v. Amorous, 3 Ga. App. 50, 59 S.E. 338 (1907).

litigation. On one hand, adherence to the theory of "liability for fault" would indicate that moral wrongdoing ought to be singled out for punishment with a consequent chastening of the wrongdoer's character. On the other hand, there appears to be a preoccupation with the fate of the victim rather than the fault of the tort-feasor, even when the whole proceeding of the litigation is cast in the form of a common law action based on liability for negligence. In such a situation as this one, any effort of the court to make the finding of liability reach the character of the wrongdoer and leave there a mark which will serve as a continuing reminder of the folly of his recklessness is diluted and ineffective. The moral lesson for the tort-feasor is lost amid a mass of words dealing with the social and economic aspects of the victim's individual problem.

Moreover, the lesson which comes from litigation comes too late in the sense that it is too far removed from the occurrence of the accident. Years of delay, which are not uncommon where cases are set for jury trial,[9] insulate the minds of the parties to the impact of the court's decision when it is eventually pronounced, with the result that regardless of the theory of liability adopted the process of litigation has largely become meaningless to the layman and has passed into the hands of a handful of highly skilled and organized professionals who follow the trends of the courts' decisions as a means of perfecting their own art.

Finally, the great extent to which liability insurance is held probably operates to minimize the role of highway safety in the process of litigating automobile accident cases. Direct evidence of the effect of insurance upon highway safety is difficult to isolate,[10] but there is a certain irrefutable logic in the often-heard observation that when an individual must pay for his negligence out of his own pocket the experience is more personal than when his insurance company pays his liability for him.

These considerations indicate why one is not encouraged to look to the process of tort claim litigation for any significant contribution toward the promotion of highway safety. The process simply is not able, under present conditions, to bring its effect to bear strongly enough upon the persons in whose hands the future record of highway accident ultimately rests. Litigation, whether carried on under the "fault theory" or some modification of it, does not personalize the issue sufficiently to operate as an effective deterrent to future dangerous driving. Therefore, the attempt to make civil penalties supplement the criminal law in promoting highway safety has found its best expression in legislation and administrative

---

[9] N.Y. TIMES, February 8, 1954, citing a survey conducted by the N.Y. State Judicial Council.

[10] James, *supra* note 5, p. 557.

licensing procedures which overcome the disadvantage of indirectness, remoteness, and slowness of operation. It is in this form of law that chief reliance for solving the automobile accident problem now rests.

### The Psychology Of Driving

Before considering the effectiveness of these laws, mention should be made of certain psychological factors involved in driving. These factors serve to outline the area of behavior in which these laws must work. Enough is known about the process of operating a motor vehicle to say that it is not a series of entirely reflex actions. But, on the other hand, it is not such a complex operation as to require constant attention and a series of decisions arising from the highest levels of conscious thought. The focal point of the driver's attention is (or should be) the road situation ahead of him. The motorist is conscious of his own place in this road situation and the effect of regulating his speed and direction upon his place in that situation. Within the field of this *"total road situation"* the driver relates himself to other objects upon the basis of the meaning they have for him in the task he is performing.[11]

For example, a driver moving along a street sees another car parked on the right side of the road one hundred yards ahead. He is conscious of the car, but not its make, its license number, whether it is old or new, or whether there is anyone in the car. This car has no meaning for him except that it is a thing to be passed as he moves down the street. It remains in his marginal consciousness until it is passed. But, let this parked car have a driver in it who suddenly starts the car and pulls out into traffic ahead. This movement by the car which had previously been parked alters the road situation, and, in response to this new development, the driver of the oncoming car slows the speed of his own vehicle or changes his course in order to avoid a rear end collision. But in so doing, the driver does not concentrate his attention on the car which has just entered the flow of traffic ahead of him for more than a brief moment, if, indeed, he ever permits it to dominate his attention at all. Throughout the series of acts which are performed to adjust the speed and direction of his vehicle to cope with the entry of a new element into the total road situation, the driver remains aware of a vast number of other matters with respect to which the driver must and does maintain a particular relationship.

In this way driving never consists entirely of a series of stimu-

---

[11] The term "total road situation" originates with Dr. W. J. Van Lennep in his excellent description of the mental processes of motor vehicle drivers. See his *Psychological Factors in Driving,* 6 Traffic Quarterly 483 (October 1952).

lus reactions in the sense that psychologists have frequently described. The attention of the driver to the road situation is not a sort of searchlight thrown upon things in the environment in order to better examine them. The driver must develop a widely spread attention capable of having its real "center of gravity" some 500 yards ahead, but which also permits him constantly to be aware of what is immediately in front of him and to initiate and execute simple movements and changes of speed without changing this center of attention.

Dr. Herbert Stack has described driving as "a combination of two types of actions. The first are automatic acts, such as shifting gears, avoiding obstacles and the like. The second, and by far the more important, are the acts involving problems and decision; such as: Should I attempt to pass the car ahead? What does that octagonal sign mean? What does the driver ahead propose to do by that hand signal? Do I have the right-of-way at this intersection? These and dozens of other problems arise, several in each mile we travel. The decisions we make determine the kind of driver we are."[12]

Traffic laws have a relationship to the psychology of driving since they function as a frame-work by which the driver gives order to the various objects which he perceived and must deal with as he moves down the road in his vehicle. Through traffic laws, the road and traffic conditions become part of an orderly pattern and the driver's task of decision as to what he shall do with respect to them is made easier.

These psychological factors involved in driving are important when the causes of accidents are studied. And, what is perhaps more important, they indicate the field of human behavior which must be dealt with by any legislation which is designed to deter dangerous driving and promote highway safety. This behavior which is characteristic of driving would seem to be a difficult one to reach by the procedures customarily utilized in legislation. It has none of the "intent" which is an essential element of a crime, and it generally lacks the element of deliberate calculation which is involved in most other situations where "risks" are taken in connection with the use of property. The inescapable fact is that precisely because the driver does not always have to "think before he acts" much of the process of driving is beyond the range of the deterrent effect of statutory rules.

## The Cause Of Accidents

If, as has just been suggested, the processes of so-called "normal driving" are largely beyond the ready reach of legislative mandate, it would seem that the situation is even worse when one considers the chances of effectively legislating away those causes of

[12] Stack, *What Makes Drivers Act That Way?* 1 Traffic Quarterly 29, 31 (January 1947).

accidents which frequently are due to abnormal psychological responses to changes in the road situation. It is generally accepted that roughly 70 per cent of all accidents are caused by unsafe driving.[13] In addition, the driver or owner must accept responsibility for a further portion of the total number of accidents traceable to mechanical defects which but for his own carelessness or procrastination would have been avoided. This indicates in rough terms how great an improvement in the highway accident record could be expected if legislative or administrative standards of safe driving could be made effective.

To take advantage of this opportunity for improvement is, however, another matter. Many factors may operate in the case of an individual driver to impair a "normal" reaction on his part to the road situation around him.

According to Dr. Van Lennep, there are, aside from bodily defects and lack of routine, three large groups of factors to be pointed out as important personal factors which determine whether a person is a safe or dangerous driver.[14] They are (a) the aptitude of the driver, (b) the disposition of the driver, and (c) faulty decisions of all kinds made in the process of driving. Among the aptitude factors, uneven temperament plays a leading role. An overconfident and impetuous driver has a tendency to move too directly toward his goal without regard for the route prescribed by traffic rules. In a curve to the left, for example, he tends to cut it short by using the left hand side of the road instead of the right. In another type of driver, a predisposition to panic frequently may gain the upper hand. When this occurs, the driver removes himself, psychologically speaking, from the traffic situation of which he is a part, and permits the circumstances to master him instead of his mastering the circumstances by making changes suggested by a foreseeing plan of operation. Perhaps the most common aptitude weakness which leads to personal mistakes in traffic situations, however, is a failure of the driver's attention. Rapid realization of the significance of changes in the road situation is essential for safe driving. Where this is entirely lacking, or where there is momentary lapse of attention to the total road situation, the driver is in danger. The common remark that "It just loomed up from out of nowhere" generally evokes the equally common, but futile, answer, "You must not have been paying attention."

It is also suggested that the degree to which a feeling of social responsibility has been developed in a driver is related to his aptitude for safe driving. Whether this feeling is itself an aptitude or whether it exists separately as a factor conditioning the expres-

[13] Van Lennep, *supra* note 11 at p. 492 estimates 70 percent; Stack, *supra* note 12, p. 30 estimates 69 percent.

[14] Van Lennep, *supra* note 12, p. 30.

sion of aptitudes is difficult to say. Yet, it is suggested that a driver whose strong aggressive tendencies are not controlled by an equally strong feeling of responsibility toward others is clearly a menace to the highways.

As to the second group of personal faults which have been called "disposition," one must often trace the controlling factors back to physiological origins. A driver may be perfectly capable of giving proper attention to his driving, but he may not do so because he is overtired and lackadaisical or, equally possible, because emotional disturbances interfere with his normally satisfactory ability to respond to the road situation. Morever, the driver who realizes this deficiency and attempts to compensate by forced attention is equally dangerous, for in the forced focusing of attention on certain objects others may be completely ignored.

Finally, with respect to faulty decisions, it is impossible to classify all of them under common headings. Research in the field of driver testing has produced impressive statistics on such matters as the ability of drivers to correctly estimate speed and distance. The marked lack of this ability in a large percentage of drivers becomes significant when it is realized how very many decisions must constantly be made on the basis of this ability whenever a car is moving in traffic.

Other authorities have classified the psychological factors involved in accidents with slightly different descriptive terms, but essentially there is common agreement that the root causes of accidents due to personal faults lie deeply buried in the psychological and physiological make-up of the individual driver.[15]

Carrying this subject further, it is significant to note also that a certain percentage of drivers are "accident-prone," and can be counted on to become involved repeatedly in accidents. Nationwide statistics are not available, but certain state studies have yielded startling results. A Connecticut study,[16] for example, showed that 4 per cent of the drivers were responsible for 36 per cent of all accidents, many of these drivers having from 4 to 8 accidents a year

---

[15] See generally DE SILVA, WHY WE HAVE AUTOMOBILE ACCIDENTS, (N.Y., 1942) c. 5; AMERICAN AUTOMOBILE ASSOCIATION, SPORTSMANLIKE DRIVING, (Washington, 1953), 7; James and Dickinson, *Accident Proneness and Accident Law,* 63 HARV. L. REV. 769, 772 (1950). See also Burch, *Responsibilities of Highways in Highway Accidents,* 1 TRAFFIC QUARTERLY 373 (October 1947); Neale, *Highway Landscaping Influences Traffic Operation and Safety,* 3 TRAFFIC QUARTERLY 14 (January 1949); McMonagle, *Effect of Roadside Features on Traffic Accidents,* TRAFFIC QUARTERLY 229 (April 1952); Holmes, *Automobile speeds, current and post war,* 35 J. CRIM. L. & CRIMINOLOGY 189 (September 1944); *Accident Proneness,* 115 JUST. P. 290,614 (1951).

[16] Described and analyzed in HOUSE DOC. No. 462, 75TH CONGRESS, 3D SESSION, *Motor Vehicle Traffic Conditions in the United States, Pt. 6, the Accident-Prone Driver, passim.*

while other motorists in the state, covering the same mileage, would go 5 to 10 years without a reportable accident. That the continued presence of "accident-prone" drivers on the public highways creates a significant obstacle to the promotion of highway safety is obvious. Yet, in the light of what is known about the causes of accidents and "accident-proneness," the problem of devising civil penalties which are capable of acting as effective deterrents to accident-causing behavior appears difficult indeed.[17]

This difficulty, once recognized, becomes significant when the effectiveness of legislation is being appraised. One is forced to doubt seriously whether statutory standards of behavior can ever be expected to "get through" to the driver and reach the level of consciousness at which his accident-causing driving habits are formed. The existence of a statutory standard of safe conduct means nothing to a driver whose skills and attitudes are not well enough developed to permit him to utilize that standard in his own personal conduct; the fact that failure to adhere to the standard is subject to a penalty does nothing to rehabilitate that driver's accident-proneness. The accident-prone driver will repeat his dangerous driving as long as he is allowed to drive and regardless of how many times he is subjected to penalties.

Turning from the special case of the accident-prone driver to the normally careful driver, it may be suggested that even he, in most of his driving operations, acts without conscious reference to statutory standards of safe driving. His usual driving speed, for example, is determined by habit and traffic flow; and if he drives habitually in excess of the speed limit, the driver can only correct it by giving forced attention to the matter all the while he is on the road. This typically happens when the driver thinks he may be observed by a police officer, and does not happen when the danger of arrest becomes remote. And, this, it may be suggested, happens to "the best of people," whose intentions are good, but whose mechanical driving skill permits them to operate their vehicle largely by habitual actions, and who, accordingly, do not constantly watch themselves as they drive.

### Financial or "Safety" Responsibility Laws.

Turning to a comparison of the various types of legislation that have been adopted in efforts to attack the problem of reducing highway accidents and assuring relief to accident victims, the type of law which has had the greatest appeal among the states is the Financial Responsibility or "Safety-Responsibility" Act.[18] The fre-

---

17 James and Dickinson, *supra* note 15, p. 775.

18 Some form of Financial Responsibility or Safety-Responsibility Act has been enacted in all States of the Union and in the Canadian Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, and Nova Scotia.

quent use of the latter term as the short title of the law indicates the dual purpose which the act purports to serve.[19] Operating on the assumption that the great bulk of the accidents are caused by a definitely ascertainable group of reckless and accident-prone drivers, this legislation seeks to eliminate such accident-causing group from the highways, and, with respect to all motorists generally, to encourage voluntary maintenance of a minimum level of financial responsibility for damage resulting from accidents. In its early form, the Safety-Responsibility Act became effective upon the conviction for certain serious violations or failure to satisfy a judgment arising out of a motor vehicle accident. This was found to be ineffective because application of the law depended largely upon the injured party's initiating judicial proceedings to prove liability on the part of the other person involved in the accident, and experience showed that few claimants would take the trouble to sue for a judgment-proof tort-feasor.[20] As a result, the law inspired neither respect and confidence in the victim nor fear in the wrongdoer. Eventually, therefore, the law was perfected by requiring additionally that in the event of an accident *all parties* immediately must prove their ability to meet certain minimum amounts of liability which *might* thereafter be assessed against them. This so-called "security-type" law overcame the original obstacles which had impaired its effectiveness and now has become the basic type of motorist liability law in all but three states. The typical operation of this type of law is described elsewhere in this symposium.[21] Prior to the development of the security-type law financial responsibility legislation observers generally agreed that it contributed very little toward the promotion of highway safety.[22] It was pointed out that the procedure for segregating the bad driver and following up such segregation with suspension of driving privileges was too cumbersome to be really effective. In their direct effect, therefore, these laws did not go beyond what already existed in the driver licensing laws in the way of bases for eliminating dangerous driv-

[19] "Security-type" laws are in force in 44 of the several States, District of Columbia, and in the Canadian Provinces noted above: In Massachusetts, a judgment-type law applies to liability for property damage. Kansas and South Dakota have "judgment-type laws" for liability due to death, personal injury and property damage. New Mexico requires "future-proof" following certain types of convictions and unsatisfied judgments. AMERICAN AUTOMOBILE ASSOCIATION, DIGEST OF MOTOR VEHICLE LAWS (1954), *passim*.

[20] AMERICAN AUTOMOBILE ASSOCIATION, SAFETY-RESPONSIBILITY BILL (1952), p. iv.

[21] See Crunelle, *The Ohio Safety Responsibility Law*, *infra* p. 177.

[22] Feinsinger, *The Operation of Financial Responsibility Laws*, 3 LAW & CONT. PROB. 519, 522 (1936); DE SILVA, *supra* note 15, pp. 211-213.

ers from the highways.[23] Moreover, the indirect promotion of highway safety through the growth of "social responsibility" incidental to financial responsibility was not significant. Safety-responsibility laws which did not have the security feature almost invariably failed to induce more than three out of four car owners to obtain insurance.[24]

PERCENTAGE OF TOTAL MOTOR VEHICLES INSURED, 1950, BY STATES

| Percentage | Types of Financial Responsibility Law | | | |
|---|---|---|---|---|
| | Types 1a | Types 2b | Types 3c | Type 4d |
| 90 or over (8 states) | District of Columbia | Delaware, Maryland Virginia, Washington | New Hampshire New York | Massachusetts |
| 80-89 (14 states) | | California, Colorado Connecticut, Illinois Iowa, Ohio Pennsylvania, Wiscon. | Indiana Maine Michigan New Jersey Oregon Vermont | |
| 50-79 (20 states) | Kansas Missouri New Mexico N. Carolina S. Dakota | Arizona, Idaho Kentucky, Minnesota Nebraska, Nevada N. Dakota, Oklahoma Rhode Island, Tennessee Texas, Utah | Florida | |
| | | West Virginia Wyoming | | |
| Less than 50[e] (7 states) | Arkansas | Alabama, Georgia Louisiana, Miss. Montana, S. Carolina | | |

The advent of the security-type Safety-Responsibility Act in

---

[23] Feinsinger, *Ibid.*, writing in 1936, suggested that "financial responsibility laws may perhaps perfect the scheme of suspension and revocation and do generally add judgments thereto, but the procedure of suspension and revocation as segregation as safety measure could proceed as well if not better without the requirement of proof: for example by tying it up with driver's tests instead of with judgment or conviction."

[24] Marryott, *Automobile Accidents and Financial Responsibility,* 287 THE ANNALS 83, 84 (May 1953) shows the following figures for the percentage of total motor vehicles insured in 1950:

a. Old type financial responsibility law requiring no security to satisfy any judgments rendered, but only proof of future financial responsibility, and that only after judgment or conviction.

b. Financial responsibility law requiring security, but not proof, following accident.

c. Financial responsibility law requiring both security and proof following accident.

d. Massachusetts has a compulsory automobile insurance law.

e. Of the states having less than 50 percent of motor vehicles insured, Louisiana, Mississippi, and South Carolina had no financial responsibility law prior to 1952; and Alabama, Georgia, and Montana enacted the modern type law after 1950. Arizona, Connecticut, Delaware, New Jersey, Ohio, Rhode Island, Texas, Utah, and West Virginia have adopted modern type laws since 1950.

1943[25] showed more promise of accident prevention. No new basis was provided for segregating dangerous drivers and eliminating them from the highways, but the security feature appeared to provide a better procedure for making the original approach to this problem effective. This expectation has been borne out in both the direct and indirect attacks upon the problem. Following the adoption of security-type safety-responsibility laws, the result has been an almost immediate increase in the number of driver's licenses suspended for failure to comply with the law.[26] Also an immediate upward trend in the percentage of vehicles insured is noticeable. Typical examples have been cited to show that where 30 to 40 per cent of the total number of registered vehicles are insured prior to the adoption of a security-type law this figure will increase to around 60 per cent within 90 days after the adoption of the law and, thence over a period of two to five years the number of insured drivers will steadily climb to between 85 per cent and 95 per cent of the total.[27]

Has this increase in insurance coverage and the greater strictness in license suspension procedures in fact reduced dangerous driving? Comparison of the traffic accident death statistics for years before and after the passage of security-type laws in various states does not reveal any significant increase or decrease in highway safety.[28] Nor does there appear to have been an upsurge of safety consciousness in the public. Even in New York where over 95 per cent of the vehicle owners are covered by liability insurance, the alarming proportions of traffic accident problem apparently have not been taken seriously by the public.[29] Direct evidence concerning the accident prevention qualities of the Safety-Responsibility Act should however be tempered by logic. Here two observations are suggested.

First, the sobering effect of having to comply with the "security" requirement of the law comes immediately upon the report of an

[25] In 1943 the National Committee on Uniform Traffic Laws and Ordinances incorporated into the Uniform Vehicle Code a security-type Safety Responsibility law which had earlier been developed by the American Automobile Association. The first instance of a security type law appearing in any of the States was the New Hampshire act of 1937. N.H. LAWS 1937, c. 161, later codified as N.H. LAWS 1942, c. 122.

[26] Note, for example, that in Missouri during the first 90 days following adoption of a security type law in 1953, the Motor Vehicle Department suspended over 350 drivers' licenses under the authority of the new act. ST. CHARLES (Mo.) BANNER-NEWS, November 6, 1953. For other comments on the effectiveness of the procedure of the law in Missouri, see THE COLUMBIA (Mo.) MISSOURIAN, August 11, 1953.

[27] Correspondence with Harold Phillips, Director of Public Relations, Assn. of Casualty and Surety Companies, February 25, 1953.

[28] NATIONAL SAFETY COUNCIL, ACCIDENT FACTS (published annually).

[29] N.Y. TIMES, February 22, 1954, p. 1.

accident and does not depend upon a prior judicial or administrative determination of liability. Since the penalty for failure to comply with this requirement is suspension of driving privileges, there is a personal impact upon the individual driver. Later on, as the process of adjudicating liability continues, the possibility that the motorist's own financial resources which have been posted as security may be taken to pay for lawful claims against him must constantly be considered. If he has shown financial responsibility by certification of insurance coverage, he may reflect that his own money may not be at stake, but his chances of ever again obtaining liability insurance are in jeopardy.

Of course, the effectiveness of these procedures which personalize the problem of financial responsibility for accidents depend upon the administrative skill and efficiency of the state motor vehicle officials. If these officials lack either the means or the know-how to handle the accident cases which are reported to them, from the initial stages of investigation and assessment of the proper amount of security to the final stages of compelling the surrender of registration plates and drivers' licenses of persons who fail to comply with the law, naturally these procedures will not be taken seriously by the class of drivers which the community needs most of all to eliminate from the highways. The fundamental elements of certainty and uniformity of penalties apply to these administrative procedures just as much as they do in the enforcement of criminal law. Where there has been good and effective administration, this law has earned from the public a respect which in turn has bred a sense of social responsibility in individual behavior.

The second point is that the Safety-Responsibility Law is said to deter dangerous driving indirectly insofar as this deterrent effect naturally accompanies the extension of insurance coverage. However, it may be seriously questioned whether this deterrent effect is generally felt by the motoring public because such effect depends upon a realization of the relationship between accident rates and insurance premium rates, and this realization, once experienced, having such a strong impact upon the individual driver that he carries the thought in his mind whenever he is driving. This, of course, is asking the virtually impossible. The fact is that most people who think about it *do* realize that insurance premium rates are correlated with losses from accidents. But they are neither shocked nor impressed by this fact to the point of identifying their own personal driving habits with this very abstract and impersonal set of statistics. In theory it is of course true that rational human beings may be more careful if they know that by being careless they may have to pay more money for their insurance. But the extent to which highway safety is promoted by this means is surely insignificant.

There is, however, another aspect of this indirect approach to the promotion of highway safety which should be noted. Professor James pointed out that with the steady increase in insurance coverage the insurance companies have increased their efforts to promote highway safety through education.[30] This must certainly be reckoned as a force, extralegal in character, which has appeared in conjunction with the operation of the Safety-Responsibility Laws. Accurate analysis of its effect is impossible, however, because the contribution of the insurance companies to the total campaign of educational efforts directed toward the promotion of highway safety cannot be isolated for measurements.

The suggestion that the insurance industry can, if it will, go far toward personalizing the individual motorist's stake in the total problem of accident prevention is supported by the experience of the British insurance industry with their "No-claim Discount." Essentially this plan provides that in the event of no claim being made or arising under the policy during the period of insurance immediately preceding the renewal date the renewal premium shall be reduced by certain specified percentages. Standard discounts for the so-called "Tariff Companies" run 10 per cent for the first claim-free year, 15 per cent for the second, 20 per cent for the third, and in some cases up to 25 or 33 per cent for the fourth year.[31] Such substantial monetary inducements to maintain accident-free driving records are thought by British insurers to be a real and continuing incentive to the individual driver. As one commentator has put it: "There can be no doubt as to the effect of the discount. It is mentioned by too many motorists, usually in the form of 'protecting my no-claims bonus'.... It is in the back of every motorist's mind the whole time. So, although the compulsory insurance legislation of 1930 might have given the insurance industry an excuse to get rid of a system that grew up in consideration of competition, it is realized that its abolition would be resisted strongly."[32] American insurance underwriting has no real counterpart to this British plan, for, although there are instances of preferential treatment of risks, the small amounts of the discounts involved and the limitations upon their application have failed to impress American

---

30 James and Dickinson, *supra* note 15, p. 769.

31 Chalkley, *Does the British No-Claim Discount Prevent Accidents,* 7 TRAFFIC QUARTERLY 18 (January, 1953).

32 *Ibid.* p. 24-25. Also note Bennet, *Effect of Accident and Cost Trends on Automobile Insurance Premiums,* 3 TRAFFIC QUARTERLY, 334, 337 (October 1949): "The average American motorist takes his automobile liability insurance for granted. He rarely reads provisions that set forth the protection he is buying and properly trusting. Only on two occasions does he show interest in his liability insurance — after an accident and when he pays his insurance premium."

motorists with their personal advantage as individuals in keeping the accident loss ratio of their insurers low.

COMPULSORY INSURANCE

Few proponents of compulsory insurance have attempted to "sell" this type of legislation with arguments that it directly promotes highway safety.[33] To attempt to do so is to argue squarely in the face of contrary appearances. Where the state requires insurance as a prerequisite to registration of motor vehicles, insurance companies inevitably are required to underwrite certain risks which they would not ordinarily accept. Where insurance is compulsory, an assigned risk plan is necessary, and, as in Massachusetts, a right of appeal from an order denying insurance under the assigned risk pool. Where such appeals are subject to political pressure, the charge is made that a number of recognizably unsafe drivers are kept upon the highways long after their driving records indicate that they should be denied insurance. Some statistics on this point are revealing. As reported in the WISCONSIN LEGISLATIVE COUNCIL'S RESEARCH REPORT ON MOTOR VEHICLE ACCIDENTS,[34] the Massachusetts Insurance Appeal Board conducted 428 refusal hearings in 1951; insurance companies were sustained only 79 times. With respect to cancellations for cause, which resulted in 25,011 hearings before the Appeal Board in 1951, insurance companies were sustained only 909 times. The decision of the Appeal Board is not final and legal recourse may be had to the Superior Court in Boston. In 249 cases appealed to the Superior Court in 1951, there were only 37 reversals. According to the Wisconsin report, "several people indicated that considerable political pressure was applied to members of the Appeal Board. As in the rating process, there is considerable opportunity for political pressures to influence decisions."[35]

It has been suggested, however, that this weakness of compulsory insurance in its direct appeal to the motorist in the cause of highway safety is counter-balanced by a corresponding increase in the indirect influence upon him. Professor James has gone to great length to explain this as an argument for frank recognition of the

---

[33] In the hearings held by the Committee on Unsatisfied Judgments and Compulsory Insurance of the New York State Legislature, February 19, 1954, in New York, N.Y., even such a long-time campaigner for compulsory insurance as Superintendent of Insurance Alfred J. Bohlinger stated that in his opinion the existence of compulsory insurance could have no effect upon the problem of highway safety. Also see N.Y. DAILY NEWS, February 26, 1954, p. 28.

Others have attempted to argue that there is some deterrent effect upon dangerous driving, or at least that compulsory insurance does not increase carelessness on the highway. See 27 MINN. L. REV. 103, 112 (1942).

[34] Vol. II, Pt. 2, 104-105.

[35] *Ibid.*

need for "social insurance" to meet the automobile accident problem in the same way that the industrial accident problem was met. The gist of the argument has already been referred to in connection with the indirect effects of the Safety-Responsibility Law; that is, a greater share of the responsibility for paying the costs of automobile accidents may be placed upon the insurance companies with complete confidence that they, in turn, will react to their own self-interests and conduct more vigorous and extensive campaigns of highway safety among their insured clients.[36]

This confidence is not altogether well placed, for although it correctly assumes that the insurance carriers will react (as their record shows they have reacted) by every means at their disposal to minimize their loss ratios, it does not accurately estimate the human nature of the individual motorist. Here the evidence is again not as complete as might be desired, but if one regards financial responsibility as evidencing a sense of social responsibility toward other drivers on the road and the highway safety problem in general, then the experience in Massachusetts is not reassuring. Massachusetts has the lowest percentage of excess limit policies of any state in the nation.[37] This suggests that any plan which is compulsory inevitably generates hostility on the part of the public. Compulsory insurance has forced 99 per cent of the public to carry minimum liability insurance, but has not inspired any general feeling of responsibility to go further and provide themselves with coverage beyond those minimum limits. The analogy which this suggests is clear: since compulsory insurance fails to evoke anything further than compliance with the minimum legal requirements of financial responsibility, it must surely have the same leveling effect upon the concomitant feeling of social responsibility among drivers on the highway. Any general adoption of this tendency to rest upon the minimum standards of driving safety would be a damaging disservice to the fight against highway accidents.

Against this evidence that compulsory insurance not only fails to make any significant contribution to the promotion of highway safety but actually tends to work against it, one outstanding question remains to be answered: If compulsory insurance has this effect, why does Massachusetts have such a good record of accident prevention?[38] It is suggested that the answer to this question lies in the effectiveness of its driver licensing law, its driver improve-

---

[36] James, *Accident Liability Reconsidered*, 57 YALE L. J. 549, 557 (1947).

[37] REPORT OF WISCONSIN LEGISLATIVE COUNCIL ON MOTOR VEHICLE ACCIDENTS, Vol. II, Pt. 1, p. 52.

[38] NATIONAL SAFETY COUNCIL, ACCIDENT FACTS, shows that throughout the period since World War II Massachusetts has been among the top three in the list of states having the lowest percentage of traffic deaths per 100,000 miles traveled.

ment program and the intelligent law enforcement program of the state.[39] These forces have borne home to the motorist in direct fashion the lesson of highway safety. It is suggested that these factors rather than compulsory insurance have been responsible for what success Massachusetts has achieved in the promotion of highway safety.

UNSATISFIED JUDGMENT FUND LAWS

Unsatisfied Judgment Funds are the most recent competitors to enter the field of plans for solving the "social problem" of compensation of automobile accident victims. Legislation of this type, beginning with the example of Manitoba and Prince Edward Islands in 1945, has become fairly common in Canada and has found expression in the North Dakota Law of 1947 and the New Jersey Law of 1952.[40]

There is no need to go into the details of the manner in which the New Jersey or North Dakota Unsatisfied Judgment Fund Laws[41] work for this legislation does not purport to improve highway safety. It is frankly and exclusively a device for providing compensation in cases which would not be compensated under either the Safety-Responsibility Law or compulsory insurance legislation.[42] Unsatisfied judgment funds are frequently spoken of as the logical way to supplement Safety-Responsibility and compulsory insurance laws. By this means, it is said, the cases in which victims cannot be

---

39 Indicative of the emphasis placed upon these phases of the total campaign to promote highway safety in Massachusetts are the amounts of money spent annually by the state for "driver improvement" work. The Wisconsin Legislative Council's study notes that "Wisconsin's driver improvement program is not doing an effective job at the present time because of lack of qualified personnel and money. Wisconsin spends about 2 cents per driver per year for driver improvement. Other states that have good accident records, such as Connecticut and Massachusetts, spend as much as $1.00 per driver per year." Vol. II, Pt. 1, p. 21.

40 MANITOBA REV. STAT. 1949, c. 93, §128 (L).
PRINCE ED. ISLAND LAWS 1945, c. 17.
ALBERTA LAWS 1947, c. 11.
BRITISH COLUMBIA LAWS 1947, c. 62.
N.D. REV. STAT., c. 39, § 1701-1710.
ONTARIO REV. STATS. 1950. 167, § 97-109.
N.J. LAWS 1952, c. 174.

41 Marryott, *supra*, note 23; Pearson and Kline, THE PROBLEM OF THE UNINSURED MOTORIST: A REPORT BY THE INSURANCE DEPARTMENT, STATE OF NEW YORK (November 1951); Bergesen, A. R., *The North Dakota Unsatisfied Judgment Fund*, 3 FEDERATION OF INSURANCE COUNSEL QUARTERLY 35 (January 1953).

42 In an effort to devise social legislation which will overcome the administrative weaknesses present in the Canadian and North Dakota statutes, the present New Jersey Unsatisfied Judgment Fund Act may have features which are subect to challenge on constitutional grounds. For discussion of these questions see Marryott, *supra*, note 23; and Wise, *Which Road for the Insured Motorist*, 3 FEDERATION OF INSURANCE COUNSEL QUARTERLY 29 (July 1953).

assured of compensation under those laws will have recourse to a fund provided by contributions from the entire motoring public. Undoubtedly this would be the result, but, it is submitted, there could be no gain in highway safety attributable to such legislation. It would seem that the psychological effect of such laws upon the individual motorist would lead to a minimizing of the standards of social responsibility for good driving rather than increasing the individual's sense of personal responsibility for maintaining the highest possible standards of safety.

HIGHWAY SAFETY AND LICENSING PROCEDURES

It has been stated by those who devote their full attention to administering the motor vehicle laws that "for the money spent, and in the long run, no other activity will control accidents so well as a good driver license law well administered."[43] Coming from those state officials who are most usually responsible for administering both the driver licensing and financial responsibility laws, this choice of weapons for the fight against highway accidents deserves serious consideration. It suggests that the most effective way to build up the individual motorist's standards of social responsibility in his behavior on the highway is to put that motorist's privilege to drive in danger of forfeiture whenever his conduct is dangerous, regardless of whether such danger causes an accident or is merely a violation of the rules of the road.[44] This shifts the emphasis of the attack from being primarily concerned with the "social problem of the uncompensated victim to the personal problem of the unsafe driver and the means by which he can be made a safe driver.

Of course, driver licensing laws have existed for many years, during all of which time the automobile accident problem has grown worse rather than better. Therefore the mere threat of license suspension following a certain number of convictions seems to have been no more successful in making people drive safely than has the similar threat with respect to unsatisfied judgments under the Safety-Responsibility Law. More realistic as a means of reaching the heart of the problem is the suggestion that a *driver improvement* program, conducted as an integral part of the driver licensing law, will provide the most effective means of preventing accidents. Underlying such a suggestion is the premise that removing the driver from the road is not sufficient; he must be taught or persuaded to be a better driver.

Driver improvement programs are generally based upon administrative regulations promulgated by the State Commissioner of Motor Vehicles or his counterpart. Founded upon the statutory

---

43 BAKER, DRIVER IMPROVEMENT THROUGH LICENSING PROCEDURES, p. 11, (Washington, 1950).

44 See in this regard Brandoleone, *Determining Unsafe Drivers Before the Accident*, 86 COMMERCIAL CAR JOURNAL 68 (September 1953).

authority to suspend and revoke drivers' licenses for cause, such programs require no further basis in statutory legislation. Essentially the machinery for driver improvement takes the form of (1) a "safety point scoring system" in which a motorist's record of unsafe driving is reflected as it develops over a period of time, (2) a series of tests administered to the motorist who builds up a certain specified point score, which tests reveal the causes of the individual's bad driving record, (3) rehabilitation measures based upon the driver's weaknesses as shown in his tests, and (4) suspension or revocation of driving privileges of those individuals who do not respond to rehabilitative measures. By this procedure, it is thought that the threat of driver license suspension will not be an empty one, either from the standpoint of the respect which the motoring public has for this law or from the standpoint of the resulting elimination of the accident-prone and accident-causing members of the motoring public.

Unfortunately there is not much experience by which to test this high expectation. Some evidence comes from Manitoba where a form of driver improvement program has existed since 1951.[45] During this period the Province had roughly 218,000 licensed drivers. During the period of 1951 when the program was in effect, more than 17,000 drivers acquired points against their record. However, of this number it was necessary to suspend only 715 licenses because of bad driving records. All but a few of those suspended were granted probationary licenses after successfully completing the test and satisfying the Examiner that improvement had begun. Only six motorists were suspended a second time because they failed to improve. This apparently successful effort at analysis and rehabilitation has resulted in a marked reduction of accidents in Manitoba.[46]

Experience under the District of Columbia's driver improvement program also gives reason to place confidence in the effectiveness of rehabilitation for unsafe drivers. Under this procedure, revocation of driving privileges results from the accumulation of 12 points within a 3-year period. However, continuing efforts to improve the driver are made as points increase. At 3 points, a warning letter is sent to the driver. At 5 points, the driver is

[45] WISCONSIN LEGISLATIVE COUNCIL, *supra*, note 37, Vol. II, Pt. 2, pp. 51-53.

[46] The following record of accidents in the Great Winnipeg area between 1950 and 1951 indicates the extent of improvement capable. During this period there was a 14.3% reduction of fatal accidents, a 24.5% reduction of non-fatal accidents, and an 11.9% reduction of all accidents. In 1952 the trend continued with respective reductions of 16.7%, 3.6% and 17.5%. At the same time accidents throughout the rest of the province were increasing. During 1952, Manitoba accidents (excluding Winnipeg) rose 18.2%, 32.4%, and 4.3%. The difference is attributed to the effectiveness of the driver improvement program in Winnipeg. *Ibid.*

called for a personal conference with motor vehicle department officials at which time driving records and habits are reviewed. At 8 points, driving privileges are suspended for from 2 to 15 days. By these progressive steps, D. C. officials believe they have found a valuable means of discovering and correcting unsafe driving habits. Their authority permits them to use not only revocation, but suspension, various forms of conditional licensing, psychological testing, and education in their efforts to deal with dangerous drivers.[47]

Initially, the D. C. point system required the entry of points upon the police report of an arrest, regardless of what disposition was made of the charge by the traffic courts. It was the opinion that an arrest was evidence of apparent public danger and that all too often cases were not successfully prosecuted because of legal technicalities which returned dangerous drivers back into the stream of traffic. By way of clarification of the administrative powers of motor vehicle officials acting under this point system, however, it has been judicially decided that deprivation of driving privileges must be based upon notice and hearing before competent administrative officers or else following court conviction under statutes providing for mandatory revocation.[48]

A program of driver improvement conducted by the New Jersey Division of Motor Vehicles has been in existence for less than two years.[49] But already certain interesting conclusions may be drawn concerning the causes of accidents and the rehabilitation of those who cause them. Into the New Jersey accident prevention clinic were directed motorists who had accumulated 12 points or more over a 3-year period, accident repeaters, twice convicted drunken drivers, fatal accident operators, assigned risk insurance cases and driver license re-examination cases. Reported findings as to this group of motorists are at present confined to the point system violators since members of the other groups are not sufficiently numerous to warrant generalizations. It was found that the point system violators were on the average involved in roughly five times more accidents than the average New Jersey driver. Yet these point system violators did not differ significantly from the "normal cross-section" of the rest of the population with respect to such socio-economic factors as age, amount of education, marital

---

[47] Keneipp, *The Traffic Point System as Used in the District of Columbia*, 8 TRAFFIC QUARTERLY 235 (April 1954).

[48] Wilson v. Spencer, et. al., No. 5464-53, decided Dec. 5, 1953, U. S. Dist. Ct. (DC).

[49] Described in address of Wm. J. Dearden, Director, New Jersey Division of Motor Vehicles, entitled "Report on the New Jersey Accident Prevention Clinic," delivered to the Annual Meeting, American Assoc. of Motor Vehicle Administrators, Richmond, Va., October 19, 1953.

status and income. In these respects, they were ordinary people. Moreover, their physiological characteristics did not distinguish the violators from the accident-free and violation-free drivers. In traffic law knowledge tests 88% of the point system violators scored 80% or better, indicating that such knowledge bears little relationship to the causes of accidents within such a group. Psychological tests however indicated that driving attitudes made the difference between safe and unsafe drivers. Although the results of these tests encourage the belief that chronic violators and accident repeaters tend to be marginally adjusted, they cannot be described as neurotic. In most cases commission of a traffic violation aroused no sense of moral guilt in the make-up of the average violator. The same driver whose conscience restrained his violation of other criminal laws seemed to attach no moral guilt to violations of the motor vehicle and traffic laws unless or until death or serious injury resulted from a violation.

The explanation of this success where other types of legislation have failed would seem to be clear in the light of what has been said throughout the foregoing discussion concerning the psychology of driving, the causes of accidents, and the methods of various types of legislation seeking to have an effect upon these causes of accidents. In his annual report for 1952, the Director of the Division of Motor Vehicles of the State of New Jersey pointed directly to this key to success. He states: "After six months of operation the point system has materially altered the thinking of New Jersey motorists. Where they used to think in terms of dollars in relation to traffic fines, they now think in terms of points. The impact of this change thinking on the safety consciousness of the motoring public has been tremendous and will continue to expand in the years ahead."[50]

It would seem that the administrator of the law is here pointing out the great effectiveness possessed by legislation which emphasizes the personal responsibility of the individual for his own misconduct. Under the point system, this personal responsibility is not represented by a series of separate and isolated situations, in each of which the individual has been called to account and had the penalty for his guilt satisfied by the payment of a fine. Rather, the individual motorist's personal responsibility is a cumulative matter, in which violations of the law and instances of dangerous driving cannot be forgotten as quickly as a fine can be paid or an insurance company can arrive at a settlement of claims. Thus the deterrent effect of the ultimate penalty of a license suspension or revocation is constantly impressed upon the consciousness of the individual motorist. The impact is direct, and it contains a message

[50] 47TH ANNUAL REPORT OF DIRECTOR, DIVISION OF MOTOR VEHICLES, p. 15 (1952).

which does not require any special knowledge or intellectual ability to understand. In all these respects, the drivers' license law-driver improvement program approach to the problem of accident prevention reveals advantages not seen in the other types of legislation which have here been discussed.

## CONCLUSIONS

The great proportion of highway accidents is caused by the particular driving behavior of the operators of the motor vehicles involved. Yet the driving behavior of the motoring public has generally defied classification and analysis in any way that will permit a constructive legislative program for promoting highway safety. This is because the progressive simplification of the operations involved in driving motor vehicles has made driving all but a matter of pure habit. Today one may drive with almost the same degree of detachment from conscious attention to what he is doing as when he is walking along a street. Psychologically, therefore, driving practices are largely beyond the reach of statutory standards of conduct, which at their best affect only that part of human behavior arising from deliberate and conscious response to the stimulus of environment and events. Moreover, whenever the normal psychological equipment which an individual motorist must rely upon to control his driving behavior is impaired or subject to inherent weaknesses, additional obstacles are raised against the penetrating effect of the legislative mandate.

Because the psychological factors involved in driving are so difficult to reach through legislation, most existing statutes and administrative procedures dealing with motor vehicle accidents have had only slightly deterrent effect upon dangerous driving which causes accidents. Moreover, in proportion to the degree to which the emphasis of such legislation is placed on "the social problem" of compensating the accident victim, these laws and procedures have tended to lose what deterrent effect they have had upon unsafe driving practices. It should be axiomatic that if the ultimate purpose of legislation is to prevent automobile accidents, it must make its effect felt directly upon the unsafe driver, for he is the key to the entire chain of events leading up to the accident. For this reason compulsory insurance, unsatisfied judgment funds, and steps toward the development of tort liability theories which rest upon social insurance or a right to compensation regardless of causation all labor under an initial and fundamental disadvantage with respect to their deterrent effect upon accident-causing driving behavior. To a certain extent Safety-Responsibility laws also operate under this unfavorable balance of factors. But insofar as they actually do succeed in segregating the dangerous and accident-prone drivers and eliminating them from the highways, these laws

work for basic improvement in the composition of the motoring public. And insofar as a sense of social responsibility is concomitant to a sense of financial responsibility, these laws appear to have induced widespread acceptance by individual motorists of a personal responsibility for both the social problem of compensating the accident victim and the more basic problem of preventing the causes of accidents.

Throughout the entire comparison of various types of legislation as they relate to highway safety, the effect of insurance is felt. Yet the role of insurance in molding individual driving practices is an enigma. Where insurance coverage exists, the individual driver probably is not nearly so much impressed by the relationship between his premium and his carrier's loss ratio as he is by the knowledge that he has shifted to his insurance company the financial liability for future injuries and damages attributable to him. The direct impact of insurance upon the individual driver may, therefore, reduce highway safety-consciousness. This has led some to say that the most effective role of insurance in promoting highway safety is an indirect one, finding expression in the safety education campaigns conducted by the insurance industry and the accident prevention work done by motor vehicle fleet operators seeking ways to minimize their insurance costs. Within their limitations these extralegal procedures have their most significant effect upon the driving habits of the motoring public. It would be desirable, of course, if the efforts which have been made to rationalize the self-interest of the mass of motorists in reducing their premiums through prevention of accidents could be personalized for the individual driver. In this respect the British "No-claim Discount" may recommend itself to greater imitation by American underwriters and to serious consideration by American legislators.

The comparison of civil statutory and administrative techniques for deterring dangerous driving practices suggests that none of the existing forms of legislation holds as much promise as does the technique of selective driver licensing coupled with a program of driver improvement. No other form of law is more successful in discovering and segregating the dangerous and accident-prone driver. No other procedure is more direct in reaching, with lasting and personal impact, the psychological factors involved in driving and in the causes of accidents. Constitutional and legislative problems involved in such plans are negligible, and for the time and money invested in administrative processing, no other system has yielded greater improvement in highway safety. Where such administrative procedures are now being used, they have shown themselves to be a natural supplement to Safety-Responsibility laws in their efforts to eliminate reckless and irresponsible drivers. Where driver improvement has been used in conjunction with

compulsory insurance it has gone far in counteracting the inevitable failure of that system to instill a feeling of individual responsibility for highway safety. These signs of promise are welcome, and point out at least one definite course by which civil penalties, operating through statutory and administrative procedures, can make a positive contribution to the promotion of highway safety.