Introduction

A. What the Study Shows

This report is like a map of an unknown, or a little-known, country. It is a sketch of the principal contours of that area of human activity, aspiration, and conflict which is concerned with the reparation of personal injuries.

Like a map, it does not tell what should be done about the country portrayed—whether it should be embraced, repelled, or reformed. It does not even tell which facts are most “crucial” for that decision. Each statesman will have his own opinion about these questions.

The report is presented as a pool of data which will serve many purposes. First of all, the report furnishes a perspective on the largeness and the smallness of the reparation process, and of its many parts. Second, the report supplies much more specific information than has ever before been available on many points, such as the high or low level of reparation in relation to losses; the number of people who get paid, and those who receive nothing; the levels of legal expense, including attorneys’ fees. Third, it will furnish a guide for future research directed to narrower questions, by disclosing what are the kinds and approximate dimensions of the phenomena which call for further examination.

In order to suggest what sorts of information the report contains, and what conclusions may be drawn from it, a few of its findings are sketched in the following paragraphs. These findings have been selected from among many others as the ones most likely to be meaningful in the eyes of readers of many different kinds. Most of this summary relates to the survey of Michigan automobile accidents, which forms the major portion of this study.
1. How Much Do Injury Victims Lose?

Police have for years collected statistics on fatalities and injuries from automobile accidents. These are based on appearances at the scene of the accident, before any medical examination has taken place. The results are recorded in terms such as "serious or possibly serious," "slight shock and contusions," or "shaken up."

Partly because measures of the seriousness of injury are elusive, and partly because this study was directed toward money payments, estimates were made of the amounts of economic loss suffered by Michigan automobile accident victims. These estimates show dramatically how many of the accidental injuries involved very minor economic loss, and how very few, relatively, involved personal economic disaster.

The total number of persons who sustained some economic loss in a personal injury accident in the survey year was over eighty thousand—about one for every hundred Michigan residents. All these were potential candidates for reparation, but over 60 percent of these had total economic losses of less than five hundred dollars, which could hardly create major social problems. The proportion with losses under three thousand dollars was over 90 percent. The proportion with losses of over ten thousand dollars—losses which would cause deep economic distress in the average American family—was between 2 and 3 percent of all those with losses. Although these victims of severe injury were few in relation to the entire population, they amounted to over twenty-four hundred unfortunate persons in a single year.

Since money is not the only test of loss, another grouping was made of injuries deemed "serious" because of the amount of medical expense, the length of hospitalization, the permanency of disability, or the occurrence of death. More detailed information was obtained about these cases, which came to over ten thousand persons in a single year. They were not distributed proportionately through all age groups in the population but were significantly
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concentrated in the most productive ages—from twenty-five through sixty-four years of age.

2. The Role of the Courts

A great deal of the attention given to injury cases has been centered on the trial, with emphasis on trial tactics, rules of evidence, and delays in getting to trial. Of more than eighty thousand injury victims, only about five hundred—less than 1 percent—reached trial. Substantially all of these were the victims of “serious injuries” and comprised about 5 percent of that group. The other 95 percent of the “serious injury” victims, and the other 99 percent of all victims, dropped or settled their cases without the benefit of a trial on the merits.

But the court role is much larger than these figures would suggest. About 5 percent of all injury victims, including about 26 percent of the “serious injury” victims, filed suit; these claimants collected damages much more frequently than those who did not sue. However, there was a selective process administered by injury victims and by lawyers in bringing the more hopeful cases to court; it is impossible to say how far the greater reparation in the court-filed cases reflects the advantage of filing, and how far it represents the shrewd judgment of those who decided whether or not to file. The impressive fact remains that a substantial majority of “serious” cases, and the great mass of all cases, were terminated without court intervention.

This suggests some important lessons for those concerned with improvements in the disposition of injury claims. Improvements in court procedures have no direct impact on the welfare of the majority of claimants and defendants in injury cases; the majority of persons are affected only to the extent that what goes on in court is reflected in what goes on out of court. Interviews indicated that many factors besides a cold prediction of the jury verdict influenced injury victims to settle or abandon their claims. If the handling of the great mass of injury claims is to be im-
proved, it is the adjustment process rather than the judicial process which will have to be changed.

A second lesson is a gloomy one for the expediters of jury trials. For every injury case now reaching trial, there are seven more suits which are settled before trial, and the long delay is one of the reasons for settling. A slight reduction in delay will surely bring additions to the backlog of cases seeking trial. And behind the woodpile of filed cases lies a forest of unfiled cases which might become filed cases if court procedures were more expeditious.

3. Sources of Relief for Injury Victims

Fortunately for the victims of automobile injuries, most of them are not forced to sustain unaided the blows of loss.

The most important source of outside help was the system of tort liability insurance, to which uninsured tort liability made an insignificant addition. Tort settlements (with or without court action) furnished a little more than half of all the reparation received.

Second in importance came a number of other kinds of insurance grouped as "loss insurance." This term embraces life insurance, health insurance, automobile collision insurance, and all other kinds of insurance which people buy for protection against their own losses, rather than against liability for someone else's losses.

All other identified sources were of minor significance in the aggregate, however important they may have been in individual cases. However, it is probable that social security plays a much larger role than these figures indicate. Social security payments to disabled persons under age 50 did not become effective until late in 1960, after most of the field work in the study had been completed. Social security benefits for older disabled persons, and for the survivors of fatality victims, were in effect; but since the bulk of these were future expectations, they were difficult to esti-
mate satisfactorily. The only payments which were tabulated as reparation received from social security were pension instalments which had been received at the time of interview; these amounted to only about 2 percent of total reparation received.

Before translating these data into action programs, it is important to recognize that the relative roles of various reparation systems are undergoing mercurial changes. A moment’s reflection will recall the fact that social security and health insurance were practically nonexistent thirty-two years ago when the famous Report by the Committee to Study Compensation for Automobile Accidents was published. One chapter of the present study shows how these programs, in their entirety, have overtaken and far surpassed automobile liability insurance in twenty years. Their growth is continuing as these words are written. An intelligent program for dealing with injury reparation must consider how large these programs have become, and how much larger they will be at the target date for any revision program.

A shift of the fulcrum of reparation from tort liability to health and income insurance has already taken place in England, France, Germany, and Sweden.

4. Levels of Relief

In the aggregate, the total reparation received by injury victims was roughly half of their economic losses. But its distribution is amazingly uneven.

Some injury victims got nothing at all; this was the fate of more than a fifth of all those suffering some economic loss, but many of these had such small losses that nonreparation must have imposed little hardship. More impressive is the fact that about 6 percent of the “serious injury” victims received no relief from any source.

Among the “serious injury” victims who received some reparation, it was possible to make case-by-case comparisons between the amount of loss and the amount of reparation. At one end
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of the scale were one fifth of the injury victims, recovering less than a quarter of their economic loss; at the other end were another fifth, who recovered more than one and a half times their economic loss. The smaller the loss, the greater the chance of generous compensation. Among persons with losses of under a thousand dollars, nearly a third received much more than their economic loss; among those with losses of $25,000 or more, only a twentieth substantially surpassed their economic loss.

These observations relate to reparation from all sources; when tort reparation alone is considered, the disparity between the level of reparation becomes even more striking. No one with a loss exceeding $25,000 was found to have received a tort settlement even approaching his economic loss. (See chapter 6.)

This phenomenon of ample settlements for the least severe injuries and fractional ones for the most severe is emphatically confirmed by a contemporaneous survey conducted at the University of Pennsylvania. This survey embraced minor as well as serious injuries. It showed that reparation in cases with less than one hundred dollars of "tangible loss" was frequently five times the tangible loss; in cases of loss exceeding $3000, it was never as much as five times the loss, and was most frequently less than half.*

There are many possible reflections on these facts. One of the most obvious is this: justice is unlikely to be furthered by weighting the scales more favorably to claimants in general, or to defendants in general. There is little need to augment the amounts of reparation in minor injuries; there is even less need to diminish reparation for fatal and debilitating accidents.

Another reflection flows from the uneven levels of reparation when weighed with the multiple sources of reparation. If any rational pattern of total reparation is desired something must be

done to reduce the overlapping of reparation from different sources.

5. The Burden of Reparation

Reparation must be paid for. According to the pure theory of tort law, it would be paid for by the guilty cause of the accident. If the guilty cause is the injury victim himself, he would bear his own loss without reparation; if it is someone else, that person would pay "damages" to the victim.

In the cases covered by the survey, very little reparation—an almost negligible amount—was paid in this way. Practically all tort damages were paid by liability insurance companies. These companies received their funds from the premiums paid by automobile owners. Therefore the burden of reparation did not fall on the guilty; it fell on the entire class of automobile owners.

There is some differentiation among the rates of different classes of owners; an owner with a bad record may find himself paying a higher premium, but he could pay this for the rest of his life without making up the amount of a single large loss. Therefore, tort damages do not usually effect a shift of loss from the innocent to the guilty, but from nonowners of automobiles to owners and from injured owners to noninjured owners.

Although moralists might regret that the "guilty" driver seldom feels the impact of someone else's loss, economic utility theory tends to view the spreading of loss as desirable whether it takes place among the innocent or among the guilty. The only economic advantage of concentrating the burden upon the guilty would be to deter accident-causing conduct; but there is little if any evidence as to whether increasing the danger of personal liability has any such effect.

After tort damages, it will be recalled, the most important source of reparation was (loss insurance) This sort of insurance shifts losses from the injured to the uninjured; it is a device for
spreading risk among the entire group which considers itself exposed.

(Social security) which probably has an alleviation role considerably greater than the survey showed, puts the burden of reparation on the whole mass of employees and employers, without regard to whether they are even exposed to the particular type of risk involved.

There are also some very significant differences in the amount of burden which must be borne in order to deliver reparation. There is no such thing as equality between benefit and burden; the process of shifting loss inevitably involves an operating expense. In tort damages, the burden is very great; in the aggregate, the total burden is more than twice the net reparation delivered. This is partly because of the refined objectives of tort reparation, which is "custom made" for each injury victim, and partly because tort damages have many other objectives beyond mere reparation, including the deterrence of negligence. At the other end of the scale is social security, where the operating expense rate appears to be about 3 percent of the reparation delivered. Private loss insurance appears to stand in between; but it is a Mother Hubbard for all kinds of regimes, some of which are nearly as costly as tort damages, and others nearly as economical as social security.

These observations have great significance for those who want to improve the lot of people who are impoverished as a result of injury. The lot of these persons might be improved by enlarging the allowances of tort law, or of loss insurance, or of social security; the burden on other elements of society would vary immensely according to the regime adopted.

6. The Attitudes of Injury Victims

It is not enough to bind the wounds of the afflicted; it is important that the victims of adversity should feel that society has dealt fairly with them, and that they should not carry away
grudges against courts, lawyers, and insurance companies which will poison their future relationships.

There was a disturbing stream of evidence that many beneficiaries of the services of accident reparation carry away reactions of disappointment and even bitterness. It may not be surprising that 54 percent of the seriously injured thought their tort settlements were inadequate. It is more disturbing that 53 percent thought their cases should have been handled differently to get more money; 47 percent blamed the liability insurance company for treating them unfairly. Thirty-seven percent had disagreed with their lawyers at some point in negotiations.

It is difficult to know how to weigh these answers; the survey did not ask whether the people who were dissatisfied with their tort settlements were also dissatisfied with their salaries, their housing rental, or other aspects of their lives which were unrelated to their injury. But it did ask how they felt about one aspect which was disassociated with their monetary reparation. When respondents were asked whether they were satisfied with their medical treatment, only 14 percent reported dissatisfaction.

Other observations—some of which cannot be quantified—painted an emphatic picture of anxiety, frustration, disappointment, and resentment felt by injury victims in the course of the adjustment and litigation processes. It is clear that there is room for tremendous improvement in the relations between injury victims and the people who deal with them.

B. The Design of the Study

The study was born of a suspicion that the handling of personal injury cases is among the most critical problems facing the legal profession today. Clearly a large part of the public believes that ambulance-chasing and outrageous fees are commonplace. The waiting period to get to trial in many major cities is notorious. Even legal theory is showing symptoms of malaise, as attacks are
made on contributory negligence, damages for pain and suffering, and exclusion of evidence of insurance.

The designers of this study did not wish to contribute to the welter of opinions on legal theory, nor even to add to the studies of client procurement, attorney compensation, and trial delays. They conceived the notion that a new start should be made by studying the underlying human demand whose pressures have bubbled forth in the form of a "fee problem," a "delay problem," and other "problems." This human demand was conceived to be the desire for something to fill the trench in material well-being which is gouged by a personal injury.

The grand design was to discover what are the economic losses from injury, and what is being done to repair these losses. It was supposed that the trail would lead back to the point of initial curiosity—injury litigation; but it might lead in a good many other directions, which would be equally instructive.

Three separate methods of study were adopted. The first method was to collect and analyze national statistics on programs which would presumably come to the aid of an injury victim. The results of this approach constitute Part I of this report.

The second method was a field survey. It began with interviews with persons involved in personal injury automobile accidents. Later, thanks to an additional grant of funds, it was extended to include interrogation of lawyers for the injury victims, lawyers for defendants, individual defendants, and hospitals. This led to the heart of the study, which is the survey of Michigan automobile injuries, reported in Part II.

The third method was an inquiry into foreign systems for dealing with the same human demand. Foreign laws, lawyers, courts, and insurance companies may differ from their American counterparts, but modern foreign countries are sure to have the same human demands, occasioned by accidental injuries. Informants from England, France, Sweden, and West Germany supplied
information on sources of reparation for automobile injury victims in their respective countries. Their reports form Part III.

C. SPONSORSHIP AND SUPPORT

The first plan for the present study was presented by Alfred F. Conard of the University of Michigan Law School and James N. Morgan of the University of Michigan Department of Economics and Survey Research Center to the committee charged with grants from the William W. Cook Endowment for Legal Research. In 1958, the Endowment made a grant to carry out the project, with operations to begin in mid-1959. As the project went on, it became clear that the original grant would not be adequate to permit interviewing lawyers and individual defendants as well as injury victims.

A request for funds to support an extension of the project was granted in 1961 by the Walter E. Meyer Research Institute of Law, Incorporated.

D. THE PEOPLE WHO HELPED

Many of the people whose help was most crucial in bringing this study into existence, and helping it on its way to completion, are not shown on the title page. E. Blythe Stason and Allan F. Smith, who were respectively dean of the Law School and director of Graduate Study and Research at the time the study was proposed and launched, gave important impetus and encouragement to the project. The sympathetic interest of Rensis Likert and of Angus Campbell, directors respectively of the Institute for Social Research and the Survey Research Center, was equally indispensable.

Soon after the field work on the survey had begun, the directors of the project found that they would need advice from representative groups of persons involved or potentially affected, and therefore organized an advisory committee composed of representatives of the bench, the bar, the insurance industry, and the
automobile industry. Some of the original nominees were later replaced, or represented by others. The Michigan State Bar declined to name members of the committee, but designated two members of its Committee on Public Relations to serve as observers. The roster of committee members, representatives, and observers is as follows:

The Honorable John R. Dethmers  
Chief Justice of the Michigan Supreme Court

Mr. Thomas A. Eggleston  
General Manager, Aetna Casualty and Surety Company

Mr. Paul Erickson  
General Counsel and General Manager, Detroit Inter-Insurance Exchange

The Honorable Frank Fitzgerald  
Judge of the Circuit Court, Wayne County

Mr. W. L. Ginsburg  
Director, Research and Engineering—UAW (AFL, CIO)

Mr. Chalmers L. Goyert  
Director, Central Products Planning Office  
Ford Motor Company

The Honorable James M. Hare  
Secretary of State for the State of Michigan

Mr. Robert G. Jamieson  
General Manager, Detroit Automobile Inter-Insurance Exchange

Mr. Benjamin Marcus  
Marcus, McCroskey, Finucan and Libner  
Attorneys at Law

Mr. Fergus Markle  
Markle and Markle, Attorneys at Law

Mr. Thomas C. Morrill  
Vice-President, State Farm Mutual  
Automobile Insurance Company
Mr. Edward H. Schroeder  
Vice President, Allstate Insurance Company

The Honorable Talbot Smith  
Justice, Michigan Supreme Court, and United States District Judge for the Eastern District of Michigan

Mr. R. Lee Williams  
Attorney at Law

The committee was very helpful to the directors of the project in indicating where cooperation or resistance might be met in gathering information. Several committee members also gave additional help outside the committee sessions. In particular, Mr. Erickson was helpful in indicating what information insurance counsels would be free to furnish, and in supplying from his company's own files information on the number and character of accidents not reported to police.

The generous cooperation extended by a number of state officials and agencies was also an indispensable aid in the project.

For permission to sample official records, thanks go to Secretary of State James M. Hare, Michigan State Police Commissioner Joseph A. Childs, and Detroit Police Superintendent Louis A. Berg. The actual sampling of records for Detroit was completed in the Accident Prevention Bureau (Detroit Police Department), which was headed by William H. Polkinghorn, Traffic Director. Within the Bureau, a great deal of assistance was provided by Sergeants Wells and Crittenden.

For the state outside of Detroit, records were provided by the Traffic and Safety Division, Michigan State Police. This division was commanded by Captain Shirley G. Curtis. The actual mechanics of sampling were accomplished by Mrs. Irene H. Strayer and Mrs. Sandra Lundberg.

The samples for a number of early pretests were provided by the Ann Arbor (Michigan) Police Department, through the cooperation of Casper Enkemann, then Chief of Police.
In addition to the above, help and advice was also provided by Meredith H. Doyle, Court Administrator, Supreme Court of Michigan, by Leo Frank and Robert Yake of the Driver's License Records and Processing Division, and by staff members of Michigan State University's Traffic Safety Center, directed by Gordon Sheehe.

Within the University, consultation was generously given by Wilbur Cohen, professor of Social Work, who continued to be helpful in his later office of Assistant Secretary of Legislation of the Department of Health, Education, and Welfare. Extensive assistance on problems of insurance statistics was received from Allen L. Mayerson and Donald L. MacDonald of the School of Business Administration. Helpful suggestions were received from William Haber, then Professor of Economics, and from Robert J. Harris and many other members of the law faculty.

A number of law students (now members of the bar) gave indispensable help as research assistants. Among these were John Dood, Robert Seymour, and Harvey Friedman. A number of other law students participated as field workers in recording material from Michigan court dockets. In the more distant areas of the state, practicing lawyers were kind enough to collect and submit data on court records. These included William M. Brown, Esq., of Traverse City, and Edward A. Quinnell, Esq., of Marquette.

Since the principal research workers at the Survey Research Center were dividing their interest among this and other projects, the essential burden of maintaining continuity in the handling of data fell upon successive research assistants, both of whom worked with unusual devotion on the project. These were Miss Kaisa Braaten and Mrs. Nancy Baerwaldt.

Also at the Survey Research Center, indispensable contributions were made by Dr. Morris Axelrod, assistant head of the field section, and by his staff of experienced interviewers throughout the state, by Dr. Bernard Lazerwitz and Miss Irene Hess, who devel-
oped the sampling design, by Mrs. Doris Muehl of the coding department, and by Messrs. Charles S. Mayer and John McHale, who assisted in the gathering and analysis of interview information.

Many secretaries labored patiently with the records and the correspondence of the project. These included Mrs. Darlene Weygandt, Miss Charlotte Davis, Mrs. Dorothy Fink, Miss Dale Coventry, and Miss Elaine Gebhardt.

E. BIBLIOGRAPHY OF OTHER STUDIES AND OF REFORM PROPOSALS

The present study was designed to enable concerned persons to evaluate more competently the need for reform, or for preservation of existing elements in injury reparation systems. However, no proposals to reform or to preserve are contained in this report. All such proposals involve political and social predilections which are best separated from scientific inquiry.

The formulation of action proposals is appropriately undertaken by many persons other than those who carry on scientific investigation of the underlying problems.* For the convenience of such persons, a short bibliography of other factual studies, of proposals for change, and of reports on various legislative enactments, is included here.

Field surveys of accident costs and reparation


* One program which may lead to such formulations was announced in September 1963 by the Harvard Law School. A "Study of the Automobile Claims System" will be carried on under the direction of Professors Robert E. Keeton and Jeffrey O'Connell, and with the financial support of the Walter E. Meyer Research Institute of Law.


Reform proposals and discussion of proposals

Ames, Fitz-Gerald, Sr., and others, The Subcommittee Appointed to Study the Proposed Automobile Accident Commission Plan, Report to the Automobile Insurance Law Committee of the American Bar Association. August 30, 1960 [unbound and not published].
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Curtis, Edward R., and others, A Commission to Study the Problem of the Uninsured Driver, Report to Governor Williams (1958) [unbound and not published].


Legislative Research Committee of North Dakota, Report on Automobile Liability Insurance. State of North Dakota (1950) [publisher or printer not shown].


INTRODUCTION


Studies affecting injury evaluation


Accident causes

No attempt is made here to list the voluminous literature dealing with accident causes. Attention is called, however, to a recent article which contains an extremely comprehensive review of studies on this subject.