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## INDUSTRIAL SELF-REGULATION AND THE PUBLIC INTEREST

*Harper W. Boyd, Jr.\* and Henry Claycamp\*\*.*

THE responsibility of business organizations to society has recently been the subject of increasing attention. Even though most American corporations have become substantially more enlightened about their responsibilities to the consumer, the feeling abounds in certain quarters that business performance in this respect is not always adequate—particularly with regard to protecting the consumer's health and safety. Current inquiries by the federal government into the safety of automobiles, cigarettes, and pharmaceuticals, for example, indicate that some influential persons believe that more governmental intervention on behalf of consumers is necessary. In the past, expanded governmental control has frequently resulted from the failure of private business to provide the kind of leadership that would have obviated federal intervention.

Historically, businessmen have argued that competition is the best protector of the consumer's interests. This assumption implies that the market place offers sufficient alternatives and that the consumer knows how to select those products and services which best meet his needs. Nevertheless, governmental and business leaders have demonstrated a considerable amount of agreement with respect to the need of the consumer for assistance in improving his buying skills. Over the years, the number of business and governmental organizations designed to aid the American consumer has risen sharply; such organizations include, among others, better business bureaus, trade associations, product testing laboratories, consumer advisory councils, and state consumer fraud bureaus.

It is one thing to help the consumer make "better buys" in an economic sense, but it is quite another to help him safeguard his own life as well as the lives of others. Obviously the consequences in these two situations are very different. Typically, whenever threats to the consumer's health and safety have become obtrusively apparent, the federal and state governments—in one way or another and with varying degrees of efficiency—have taken action. Responsibility for protecting consumers has devolved upon a large number of fed-

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eral agencies, such as the Federal Trade Commission, the Food and Drug Administration, the United States Department of Agriculture, the Interstate Commerce Commission, and the Federal Aviation Agency.

As the affluence of the American society grows, a concern about such matters as health, education, and welfare has also become more apparent. Some concern derives from technological breakthroughs which require control, such as the development of aircraft for mass transportation. In other cases, increased recognition of serious threats to public health and safety has led various groups of aroused citizens to advocate governmental control. Today, growing numbers of individuals and organizations believe that the consumer's health and safety are not being adequately protected in at least two areas—cigarettes and automobiles. Thus, the following discussion is directed to the vital issue of whether these two industries can voluntarily advance consumers' interests through the imposition of adequate safety and health standards, or whether widened federal intercession is essential.

### I. CIGARETTES

Recent studies have left little doubt in the minds of most physicians and scientists that cigarette smoking has harmful effects on consumers' health and shortens their life span. It seems to be generally agreed that cigarette smoking is the principal cause of the increased incidence of lung cancer. This conclusion is particularly significant in light of the estimate of the United States Public Health Service that nearly eighty per cent of all men in the United States have a history of tobacco use and that the incidence of use among women has been steadily climbing.

In a study of 187,783 men between the ages of fifty and sixty-nine, it was discovered that the death rate from all causes among men who had a history of regular cigarette smoking was 1.68 times higher than among men who had no such history.<sup>1</sup> Furthermore, this study indicated that the death rates were closely related to the number of cigarettes consumed daily.<sup>2</sup> The study also showed that the relative rate of death from lung cancer among cigarette smokers was over ten times greater than among nonsmokers.<sup>3</sup> Currently there are

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1. Hammond & Horn, *Smoking and Death Rates—Report on Forty-Four Months of Follow-Up of 187,783 Men*, 166 J. AM. MED. ASS'N 1159, 1172 (1958).

2. *Id.* at 1161.

3. *Id.* at 1298.

approximately forty thousand deaths annually from lung cancer; this figure represents an increase of several hundred per cent since the mid-1930's. Lung cancer now causes about six per cent of the deaths among men in their late fifties and early sixties. Cigarette smoking has also been linked to cancer of the mouth, throat, and male bladder and to heart disease.<sup>4</sup>

#### A. *The Effect of Cultural Attitudes*

Clearly, the best protection against the harmful effects of cigarettes is to stop smoking them, but such a solution is rendered extremely difficult by the apparent failure of many people to perceive a significant menace to health in smoking. For example, according to a recent American Cancer Society survey only about one person in five believes that there is a correlation between lung cancer and cigarette smoking. This rather startling state of affairs could well be the result of selective perception. People believe what they want to believe; if a "message" is unpleasant or threatening, in many cases the mind refuses to receive it. The "cancer scare" has existed since the early 1950's, and yet a decrease in the per capita consumption of cigarettes has occurred only in 1953 and 1954. Certainly the increase in consumption since 1954 can be attributed in considerable part to filters, which help smokers rationalize their habit.

Any movement to reduce cigarette consumption must contend with the satisfaction which smoking brings to some deep-seated human needs. Cultural forces override the obvious disadvantages of smoking—cost, dirtiness, and unhealthiness. According to some psychologists, cigarette smoking signifies energy and drive, and many people regard cigarette breaks as a reward for hard work. In a recent study, it was determined that people smoke because: (1) it is a personal ritual—one which gives a sense of well-being and security; (2) it provides a variety of sensuous pleasures; (3) it symbolizes virility, maturity, poise, and sophistication; and (4) it facilitates social intercourse.<sup>5</sup>

Most people who smoke want to continue to do so and will rationalize the habit in some manner. Thus, success in reducing the consumption of tobacco probably lies less with increasing indi-

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4. See ADVISORY COMM. TO THE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE, REPORT ON SMOKING AND HEALTH (Pub. No. 1103, 1964).

5. See *Cigarettes, Their Role and Function* (1952) (report for the Chicago Tribune by Social Research, Inc., Chicago, Ill.).

vidual understanding of the "threat" than with reducing the cultural and social forces which sanction and encourage the use of cigarettes as desirable symbols. This approach to the problem will be exceedingly difficult and will take a long time, since cultural attitudes are not easily changed.

### B. *Vested Interest Groups*

A number of powerful and vitally interested parties are involved with the cigarette industry, and this complicates the discovery of a solution to the problem. In addition to consumers, the interested parties include the cigarette industry itself, the federal government, the national and local advertising media, advertising agencies, tobacco growers, state governments, and the American Medical Association.

The tobacco industry is primarily made up of large companies which, in the aggregate, employ over sixty thousand workers and have annual sales in excess of eight billion dollars. Although the tobacco companies have long been aware of the threat to their industry, they have done little to diversify, and their major sales and profits come almost entirely from the production and sale of cigarettes. They have primarily relied upon the introduction of new brands (an expensive undertaking) and advertising to counteract all negative influences on smokers. Therefore they remain highly vulnerable to any change which would reduce their cigarette sales.

The federal government has the responsibility to protect the health and welfare of all citizens. To date, a variety of governmental units have interested themselves in the cigarette problem, including the Federal Trade Commission, the Surgeon General's Office, the Food and Drug Administration, and the Congress of the United States. Although these groups are aware of the dangers associated with cigarettes and the increasing incidence of smoking, little effective action has been taken. Almost two years have elapsed since the Surgeon General's report linked cigarette smoking to health problems, and little has happened to suggest that a "solution" is under way. About the only notable action in this regard has been the requirement that every pack, box, and carton of cigarettes sold in this country after January 1, 1966, must carry a warning stating that cigarette smoking may be hazardous to health.<sup>6</sup> However, in the

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6. Federal Cigarette Labeling and Advertising Act, 79 Stat. 282 (1965).

same law that provided for the cautionary label, the Federal Trade Commission was specifically barred from requiring health warnings in cigarette advertising. Surely, when one branch of the federal government enacts legislation to prevent action by another branch with respect to the solution of a severe national problem, it would seem clear that a fear exists in at least some government circles that the cure may be worse than the disease—especially when an effective cure would alienate certain powerful vested interest groups.

State and federal health agencies, as well as certain health associations, have issued educational material in one form or another in an attempt to change smoking habits and especially to prevent adolescents from starting to smoke. However, it is doubtful that any of these organizations seriously believes that its efforts can do much to alter the present state of affairs.

The activity of the local and national advertising media leaves little doubt as to their stand on this matter. As far back as 1962, LeRoy Collins, then president of the National Association of Broadcasters, publicly stated that radio and television codes should provide unbiased leadership and that, in effect, the industry could not ignore the cigarette problem.<sup>7</sup> Many people in the broadcasting industry tried to minimize Collins' statements, and they publicly assured tobacco sponsors that they were eager to continue accepting cigarette advertising accounts. Perhaps this attitude is not so surprising in view of the tobacco industry's annual expenditure of approximately two hundred million dollars for advertising. Dr. Eugene H. Guthrie, chief of the Division of Chronic Diseases of the American Public Health Association, recently urged the media to reconsider Collins' suggestions and noted that "despite the pretty words in the broadcasting code, I see no real change in broadcasting practices."<sup>8</sup>

Advertising agencies have long been concerned with the cigarette problem because the tobacco industry represents one of their most important sources of income. Agency personnel have been reasonably successful in accelerating the demand for cigarettes. In so doing, they have successfully equated cigarettes with virility, maturity, sex, and social status. It appears that no agency has ever refused to accept any major tobacco account on the ground that the agency's

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7. Address by LeRoy Collins, Nat'l Ass'n of Broadcasters Conference, in Portland, Oregon, Nov. 1962.

8. Address by Dr. Eugene H. Guthrie, The American Public Health Ass'n, Oct. 1965.

efforts would increase the demand for a product which has potentially dangerous consequences for its users.

Farmers who grow tobacco constitute another interested group. Some farmers have benefited, at least in part, from the Government's tobacco price support program, which in the early 1960's was providing an annual subsidy of nearly fifty million dollars. No evidence suggests that farmers have given up the production of this "drug" en masse.

### C. *Alternative Solutions*

Given the dynamics of consumer behavior and the behavior of manufacturers and governmental bodies, what does effective self-regulation for the enhancement of consumer welfare imply in the case of cigarettes? Two courses of action seem possible: (1) production of tobaccos which are not detrimental to health; or (2) reduction or cessation of the production of cigarettes. Although efforts are being made to put the first course of action into operation, there is little evidence that positive results will be obtained.<sup>9</sup>

Attempts to restrict production or to reduce consumption are also fraught with problems. It is inconceivable that cigarette producers will voluntarily support such a program, since that would be tantamount to corporate suicide. However, the cigarette industry has established an advertising code office headed by Robert B. Meyner, former governor of New Jersey. One of the primary goals of this office is to formulate guidelines regarding advertising content which appeals to persons under twenty-one years of age.

Doubt has been expressed in some quarters that the advertising code can be effective. Certainly, the code does not strike at the heart of the problem, since it appears that the ultimate objective should be to convince people to stop smoking. Thus, remedial action must center on attempts to minimize the psychological and social values of cigarettes. A boycotting of cigarette advertising by national and local media and the harnessing of the resources of both the media and advertising agencies to develop and implement educational campaigns designed to inform the public of the dangers of smoking probably would be the most effective action which could be taken by the business community. In light of the unsuccessful experience with the Volstead Act, extreme action, such as the suppression of

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9. *No Substitute in Sight*, Bus. Week, Jan. 18, 1964, p. 52.

cigarette companies through the classification of cigarettes as a harmful drug, very likely would end up being more harmful to society than the hazards associated with smoking.

The failure of the federal government to move decisively with regard to the health problem resulting from smoking cigarettes very well may have encouraged the tobacco industry and advertising media to adopt a somewhat complacent attitude. Similarly, the consumer does not seem to be taking the matter very seriously, as indicated by the fact that in 1965 cigarette consumption increased 3.5 per cent despite anti-smoking propaganda, increased state taxes, and "innocuous" advertising.<sup>10</sup>

It seems clear that little has happened to promote optimism about the development of a well-conceived program dealing with the cigarette problem. The cigarette industry has done little self-regulation, and governmental action has dragged. In the meantime, great quantities of a supposedly lethal product are being consumed.

## II. AUTOMOBILES

Automobile accidents account for about fifty thousand deaths per year. In fact, such accidents constitute the fourth leading cause of death in the United States, and for people between the ages of five and thirty the automobile is the leading cause of death. In addition, several million persons sustain injuries each year from automobile mishaps. Nearly one out of every three persons admitted to hospitals is there because of a car accident, and one out of every four partial or complete paralysis cases caused by injury is due to the automobile.

In recent years, car accidents have cost the public tens of billions of dollars in property damage, lost wages, medical expense, and insurance premiums. Moreover, this large burden does not include such costs as those involving the police, the courts, emergency standby facilities, driver licensing, and automobile safety inspection. These add more billions of dollars to the annual cost.

The traditional attitude has been that although automobile accidents were recognized as a function of the environment in which the car operated (that is, the roads, the driver, and the automobile), it was felt that only the driver could be "controlled" to any great extent. Thus, past efforts to meet the problem have relied mainly

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10. See Maxwell, *Winstons Press Pall Malls for Lead*, *Printers' Ink*, Dec. 10, 1965.

on driver education. Without gainsaying the importance of drivers in the prevention of accidents, the belief has been growing that the vehicles themselves can be improved in ways which will significantly reduce deaths and accidents.

A. *Misplaced Emphasis by Both Designers and Consumers*

Although the problems of automobile safety and cigarettes are similar in a few respects, they involve basically different considerations. Both products have a profound "hold" on consumers, albeit for different reasons. Automobiles are certainly a highly visible status symbol, and it is felt by some people that a car tells a lot about the owner, including his adventuresomeness, virility, wealth, and social class. Rarely is an automobile thought of as simply a vehicle for transportation. Certainly the several million people who flocked to the showrooms during the first few days after the introduction of the Mustang were not just interested in a machine to convey them from one point to another.

As a consequence of the consumer's conception of the role of a car, the stylist has emerged as perhaps the most important man in the automobile industry. Manufacturers now cater to the public by offering, in the aggregate, hundreds of body styles and thousands of trim combinations. Annual style changes are surrounded by secrecy and are introduced with fanfare which costs tens of millions of dollars. It is quite clear that the large sums of money spent to create and introduce styling reduce the funds which might otherwise be devoted to engineering and safety.

The relative emphasis placed on style and safety features undoubtedly reflects the fact that the effect on consumer demand is unquestionable, whereas there is little evidence to suggest that consumers make brand choices on the basis of safety. For example, consider the elimination of door posts in many models and the continuation of fins for several years after reports that they contributed to serious accidents. The failure of consumers to give more weight to safety features when purchasing automobiles is due to many factors. As previously noted, most Americans place the blame for accidents on the driver; seldom has anyone blamed the car, an inanimate object. Similarly, all safety campaigns are addressed to the driver, on the theory that he is the only one who can prevent an accident. In fact, accidents are recorded on the basis of driver fault, since most traffic laws have been set forth in a way which, if

followed, would prevent accidents. If an accident occurs, a traffic regulation must have been violated. Such accidents are investigated almost exclusively by the police and by insurance companies. This process reinforces the law enforcement aspects of such inquiries, and only rarely is a question raised about the contribution of the car's design to the accident.

No national or state body that systematically investigates accidents has ever focused upon the design of the cars involved. The National Safety Council, which is primarily responsible for compiling and reporting traffic accident statistics, does not compile data dealing with the car makes and models involved in accidents or report on the effect of automobile design and performance on accident results. It was not until the early 1950's that vehicle design was evaluated in this connection, and then the study was made by a university under a grant from the federal government.<sup>11</sup>

### *B. Automotive Design Ignored by Safety Organizations*

In his chapter entitled "The Traffic Safety Establishment," Ralph Nader discusses the bewildering array of organizations involved in automobile safety.<sup>12</sup> The number of these organizations and their interrelationships are substantial, which is to be expected in view of the great complexity of the passenger-car system. The system includes the automobile industry, the insurance industry, the federal government, state and local governments, and a variety of associations.<sup>13</sup>

Nader points out that safety has been largely delegated to a number of non-governmental organizations which are subsidized heavily by the automobile and insurance industries. These groups include:

1. The National Committee on Uniform Traffic Laws and Ordinances, which periodically publishes a guide for state motor vehicle laws. The guide does not specify any features of vehicle design which have been related to injuries sustained from accidents. In dealing with vehicular inspection, it provides a check list which, if followed, will restore the inspected car to its original condition.

2. The Automobile Safety Foundation, which awards grants

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11. The research was done at Cornell University. The initial grant of \$54,000 was made in 1953.

12. See NADER, *UNSAFE AT ANY SPEED* (1965).

13. Of course, advertising media and related industries are also mixed in the pattern in one way or another, but they are not discussed here in the interest of conserving space.

to a variety of groups (such as the American Bar Association, the International Association of Chiefs of Police, the National Safety Council, and the American Municipal Association) for support of traffic safety programs.

3. The Insurance Institute for Highway Safety, which operates much like the Automobile Safety Foundation.

4. The National Safety Council, which is heavily involved with safety programs. This organization does little or no research directed at accident prevention and has not made any statements about automobile designs.

5. The President's Committee for Traffic Safety, which is supported by private industry. The committee's work is largely that of distributing safety information materials to other organizations.

In addition to the above organizations, the American Automobile Association, while a powerful force at both the national and local level, has almost never become involved in a critical evaluation of automobile designs. Similarly, insurance companies have been reluctant to make open attacks on automobile designs, although Liberty Mutual did design several cars which incorporated a substantial number of tested safety features. This program was recently terminated.

The foregoing discussion is a great oversimplification of the problems associated with automobile safety, but it does indicate that no single agency has any real responsibility (or enforcement power) for setting safety standards related to vehicular design. It also indicates the preoccupation with driver performance. Nevertheless, what little research has been done in relating car design to accidents shows clearly that cars can be built which will drastically reduce injuries received under certain conditions. Without too much effort, most recommendations regarding visibility, glare, and penetrating steering wheel assemblies could be implemented.

### C. *Problems Inherent in Self-Regulation by the Automobile Industry*

The problem of automobile safety is more vast and complex than cigarette smoking because: (1) more parties are involved; (2) the solution is only a matter of degree (better safety design as opposed to elimination of cigarette smoking); and (3) the individual driver automatically involves other people (pedestrians, passengers, and other motorists) and their property in his actions.

These diverse ramifications affect the available solutions to the problem.

One solution is to permit the automobile companies to respond to the problem on an individual basis and take whatever action they deem best. It seems evident, however, that, until consumers perceive safety features as an important consideration in the purchase of a specific make, hope for the achievement of significant results through action by individual firms must remain small. Incorporation of safety features as standard equipment results, for the most part, in higher costs. If consumers do not consider these features important, the company using them is placed at a competitive disadvantage. Recognizing this, automobile manufacturers have made many safety features optional equipment, but this approach does not meet head-on the problem of conflicts between style and safety. As long as relevant safety standards are not made obligatory for the entire industry, individual manufacturers are not likely to resolve such conflicts in favor of increased safety.

Individual manufacturers, however, can increase the importance of the safety appeal. Undoubtedly, all purchasers of automobiles possess at least a latent desire for safety. The literature on mass communications provides some evidence that repeated appeals to latent desires can increase their saliency and make them important variables in the decision process.<sup>14</sup> If a company were to embark on such a campaign, it would of course have to devote a significant amount of its promotion expenditures to safety appeals in order to prove that the need for safety was being met by its products.

Some of the major manufacturers apparently have made a start in this direction. For example, the Ford Motor Company recently undertook a significant promotion campaign in which the major theme was safety.<sup>15</sup> Although this undertaking represented only a small part of the company's promotional expenditures, and the ma-

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14. See HOVLAND, JANIS & KELLEY, *COMMUNICATION AND PERSUASION* (1953). If one wants to increase the saliency of the desire for safety, appeals must be used which allude to the physical danger which might occur as a result of failure to take action which would increase safety. See *id.*, ch. 3, for a summary of the literature relating to this communication situation and a discussion of the conditions under which such communication can be effective.

15. Announcement of the promotion was reported in *The Wall Street Journal*, Dec. 27, 1965, p. 5, col. 4. The news story reported that the promotion would include a twelve-page insertion in *Time Magazine* and sixteen-page supplements in twenty-five Sunday newspapers. Included in the story was an announcement by the president of the University of Michigan that an institute to study and report on safety aspects of vehicles, drivers, roads, and traffic would be established at Ann Arbor with a \$10 million grant from the four major automobile manufacturers.

jority of the advertising space was devoted to aspects of safety other than automobile design, considerable attention was given to the new safety features which are standard equipment on 1966 products of the Ford Motor Company. As might be expected, most of these features—seat belts, emergency flashers, and padded visors—are easily demonstrated to and recognized by the consumer. Nevertheless, if such promotions were carried out on a broad scale by the entire industry, it is possible that safety could become a more important dimension of competition, and the consumer would benefit.

A more pervasive solution would be for the industry to delegate complete responsibility for specifying and enforcing design standards to an autonomous agency. The agency could be either a new organization specifically established for this task or an existing but somewhat inactive body, such as the Automotive Safety Foundation, which could be revitalized. The functions of such a unit would include the collection and analysis of reports on accidents, research on the effect of alternative designs on safety under a variety of conditions, performance of the engineering required to translate the research results into product specifications, and control over the products manufactured by the automobile industry.

Such an agency would have to be an organization of considerable size and power. The need for highly qualified engineers and researchers (who would come from a variety of disciplines, including medicine and related areas) and the high cost of laboratory equipment would certainly indicate that such a center would be expensive to set up as well as to maintain. Some rough idea of possible costs can be obtained by looking at the funds spent by the federal government in its aviation safety work. In recent years, the annual expenditure has varied between approximately thirty-five and sixty million dollars. Even though airplanes are far more complicated than automobiles, there is no reason to believe that a passenger-car safety center would cost less to operate than the aviation safety program. Indeed, an automotive safety center might be substantially more expensive because of the difficulties of monitoring car accidents, working with engineers and designers from the various companies, and making certain that the minimum standards were effectively implemented in new cars. However, since the annual profits of the automobile manufacturers run into many hundreds of millions of dollars, the cost of such a center should not be regarded as the critical issue. It is also likely that the expense would eventually be passed on to the consumer.

A more serious question regarding the feasibility of such a center concerns its investigative powers and the legal consequences of its findings. Since automobile accidents involve local law enforcement authorities, local courts, and insurance companies, the question of how such a center could obtain cooperation arises. Would such persons permit their work to be scrutinized closely by an outsider? Some of the problems could undoubtedly be overcome by delegating the responsibility for data collection to a prestigious institution such as a university.

A related problem would arise from investigations that resulted in the center requiring a change in standards for one of the automobile manufacturers. It could be reasoned that the imposition of such a requirement was tantamount to a finding that the manufacturer had been guilty of faulty design. Moreover, if such an investigation were instituted as a result of a series of accidents, it is likely that representatives of the center could be forced to testify as expert witnesses regarding the institution's conclusions as to design safety. The consequences of such disclosures could be devastating to the industry.

The specter of collusion would also undoubtedly be raised if an effective safety center were established. It is possible that effective safety standards, when applied, would raise the cost of manufacturing automobiles, and prices would be increased to cover both increased costs and a profit on the safety features. Increased car prices would raise a hue and cry from the Government as well as from consumers. The car is not only a vital part of life for most Americans, but it is also one of the most expensive possessions of a consumer. Automobile manufacturers would be accused of using safety as a rationale for price escalation. Thus, it is likely that the industry would be forced to submit to costly harassment by the Government.

Another aspect of the "collusion" problem has to do with the impact of safety standards on design. It is possible that the current variability of styles and designs would be substantially reduced, resulting in increased similarity among makes and models. This effect would be quite obvious and would undoubtedly lead some people to conclude that a conspiracy was underway to reduce design costs and the number of real alternatives available to the consumer. The oligopolistic nature of the car industry would intensify this suspicion.

Finally, we are faced with the problem of who would control

such a center. Because of the power which would be required for an effective safety center, it would need to be controlled in an unbiased way, but the size and scope of the automobile industry would make it hard to find a "disinterested" board of directors. In addition, would the Government tolerate such power in the hands of a single unit without governmental monitoring? On the other hand, would the automobile companies voluntarily delegate such a substantial part of their decision making to an outside agency over which they had no control? Given the expenses involved in such self-regulation and the inherent dangers of provoking governmental interference, this delegation is not likely to occur except in response to an imminent threat of governmental regulation.

D. *The Only Effective Solution—Governmental Regulation of Safety Standards*

It thus appears unlikely that the industry can or will attempt self-regulation to any substantial extent. Because of this and the obvious problems of individual state regulation, it can be argued that if safety design standards are to be established and regulation undertaken, such action must be taken by the federal government. The Government has a successful prototype in the Federal Aviation Agency, which promulgates and enforces safety regulations applying to all civilian aircraft. The FAA inspects and licenses all such aircraft, and also licenses pilots and aviation mechanics. In addition, the Civil Aeronautics Board investigates all airplane accidents. If an investigation reveals that a carrier or airplane manufacturer was negligent in following prescribed rules or was guilty of substandard workmanship which was a causal factor in the accident, then the party or parties involved can be sued for damages.

Not all governmental agencies have been as successful as the FAA and the CAB. For example, throughout its history the Food and Drug Administration has suffered from the low pay and prestige accorded many of its Bureau of Medicine positions, pressures from politicians acting on incomplete scientific evidence, and the problems of cooperating with scientists employed by the pharmaceutical industry. The large amount of work thrown on the FDA by the 1962 drug reform legislation has made it difficult for the Agency to carry out its basic responsibilities.<sup>16</sup> Thus, the effi-

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16. For a report on the problems facing the FDA's medical director, see Spivak, *Regulating Drugs*, *The Wall Street Journal*, Dec. 28, 1965, p. 8, col. 4.

ciency of a governmental agency is not by any means automatic. Unless Congress were to set up an agency with the proper authority and funds, the results would probably not be impressive. Apparently the Johnson administration has reasoned along these lines; according to recent statements in the press, the President may soon propose to Congress a five-year automobile safety program which will cost about five hundred million dollars. It is reported that the bill would empower the Secretary of Commerce to fix minimum safety requirements for all vehicles sold in the United States. Thus, the Administration appears to be taking a stronger stand on the safety issue than that proposed by Senator Ribicoff in the National Highway Safety Bill. The major provisions in Senator Ribicoff's bill deal with the consolidation of safety programs, driver education, and uniform inspection to eliminate defective automobiles. Whether either bill would meet the design safety problem sufficiently is not known.

### III. SUMMARY

Considerable evidence indicates that the consumer's health and safety are not adequately protected with respect to cigarettes and automobiles. Recent studies leave little doubt that cigarette smoking shortens the life span of human beings and that automobile accidents kill about fifty thousand persons each year and injure several million others. The cost to society of damage done by cigarettes and automobiles runs into many billions of dollars annually.

Many powerful vested interest groups are involved with the cigarette problem. To date, neither they nor the federal government have indicated an intention of taking any serious action to effect a solution. In the case of automobile safety, a substantial number of organizations are involved, and safety has been delegated to non-governmental groups heavily subsidized by the automobile and insurance industries. No single agency has any real responsibility for setting safety standards related to vehicle design.

Industrial self-regulation is not likely to emerge in the case of cigarettes. Tobacco companies are not going to commit corporate suicide, and there is no indication that cigarette promotions are being refused by the advertising media. On the other hand, the Government has not offered any effective programs to reduce or eliminate the hazard. The problem of automobile safety design is more complex than that of cigarettes. Because the incorporation of safety features is likely to increase costs and because the consumer

does not consider safety a dominant factor in selecting an automobile, self-regulation on an individual company basis is not likely to occur. An autonomous agency with delegated responsibility for specifying design standards is also probably not feasible because of legal, control, and cost considerations. Thus, governmental regulation patterned after that provided by the Federal Aviation Agency would seem to be the most effective solution.