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U. S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20590

REMARKS PREPARED FOR DELIVERY BY STANFORD G. ROSS, GENERAL COUNSEL, BEFORE THE JOINT CONVENTION OF THE NATIONAL ASSOCIATION OF CASUALTY AND SURETY EXECUTIVES AND THE NATIONAL ASSOCIATION OF CASUALTY AND SURETY AGENTS AT THE GREENBRIER, WHITE SULPHUR SPRINGS, WEST VIRGINIA, WEDNESDAY, OCTOBER 9, 1968, 9:00 A.M.

This is a season for speculation. Everyone is guessing who will win the election in November, what a new Administration will do about Vietnam, crime, civil disorders and a host of other important domestic and foreign problems.

It is thus appropriate to discuss the Department of Transportation study of the motor vehicle accident compensation system -- for even though it is just beginning and a good deal of what can be said is no more than speculation, it is inevitable that all concerned must look ahead.

As you may recall, the Study was authorized on May 22, 1968, by a Joint Resolution of Congress; and the $1.6 million appropriation needed to carry out the study was first made available on August 8.

These two actions culminated many months of intensive consideration whether there should be a comprehensive study of the accident compensation system and, if so, the most appropriate way to conduct such a study.

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The DOT Study may be traced back to October 1966 when a bill was introduced to establish a Federal Motor Vehicle Insurance Guarantee Fund to help protect policyholders from insurance company insolvancy. It soon became evident, however, that company insolvencies could not be treated in isolation. Hearings on that bill brought forth many citizens' complaints about a whole host of automobile insurance problems.

In June 1967, Senator Magnuson, Congressman Moss and Secretary Boyd began discussing the possibility of the Department undertaking a detailed study that would go beyond insurance industry practices and cover the entire automobile accident compensation system. While these discussions were going on the staff of a House Judiciary Antitrust Subcommittee started a preliminary automobile insurance study. In October 1967 they published a 183 page report recommending that further study be undertaken by the Federal Trade Commission. On December 14, legislation was introduced authorizing a DOT study to be conducted in cooperation with the Federal Trade Commission and other knowledgeable Federal agencies.

Hearings on this legislation were held during the early part of 1968. During the hearings it became clear that virtually everyone was concerned about the adequacy of the accident compensation system. But not everyone was agreed that DOT should be the one to undertake an in-depth study of the system. Some Congressmen believed that a detailed study would only hold up legislative correction of defects in the system they believed required immediate remedy. They felt the facts in some areas had been sufficiently developed to demonstrate serious problems that demanded immediate legislative action. Others, while admitting the need to develop the facts further, thought that an adequate study could be more quickly completed by a Congressional Committee, thus permitting more prompt legislative solutions. As an accommodation of some of these views, it was agreed during the hearings that the DOT Study would not interfere with a study of the automobile insurance business now underway by Senator Hart's Antitrust Subcommittee.

These hearings and other Congressional actions have demonstrated the National scope and importance of the problem and the public's urgent desire for prompt and sound corrective action. Congress, however, has also made clear that it wants to avoid hasty and ill-conceived solutions. It is now widely recognized that there must first

be a comprehensive analysis of the problems in all their aspects and a full and frank development of whatever steps have to be taken to meet the problems. And the DOT Study is a response to this clearly expressed National need.

With this background in mind, I would like to bring you up to date on the progress of the Study so far, set out our immediate plans, and speculate a little about the future course the Study is likely to take.

As managers of organizations, you will be interested in how the Department of Transportation is organizing itself to conduct this Study. First of all, a staff of economists, lawyers, statisticians, insurance experts, and others, is being assembled that will do the day-to-day work under the general supervision of the Assistant Secretary for Policy Development.

But organizing this staff effort is only a part of what must be done. The Study is under the law a responsibility of the Secretary of Transportation and the Department as a whole. Thus, the Secretary with the aid of Departmental officers will have the job of finally deciding what the nature and content of the Study will be. As General Counsel, I have particular responsibilities with respect to the legal aspects of the Study and its implications with respect to law.

It is interesting to compare the organization of this Study with that conducted by the President's National Advisory Panel on Insurance in Riot-Affected Areas, for which I served as Executive Director. There the Presidential Panel assembled the staff, and the staff's work was presented for action to the Panel. Under the DOT Study, the Secretary and the Departmental officers, with the help of Advisory Committees, will fulfill the role of the Panel.

A nucleus of a staff is already hard at work and additional recruiting is underway. Our efforts have been directed to acquiring the best possible people. We have been highly selective and so far very successful. It is expected that a full-time staff of 12 to 15 persons, representing some of the finest talent in the Nation, will be on board by November. A sizable roster of distinguished consultants is being established and extensive use of them is anticipated. Other Government agencies will also be called upon for major contributions.

We will shortly be appointing Advisory Committees that are broadly representative of various interested groups such as the insurance industry and legal profession, and of the public generally. These Committees will be kept fully informed of the work as it progresses, will make suggestions and will help to insure the kind of close cooperation that is vital to a successful Study.

But our lines of communication will not stop there. An "open door" policy will be pursued that goes much beyond the formal Advisory Committees. We feel every resource should be tapped. The Study staff is seeking as broad a spectrum of views as possible. No one should refrain from contacting the Study staff if he has information or views which he believes merit consideration. In brief, we do not want any individual or any group to feel excluded just because they were not invited to sit on this or that committee or attend this or that meeting.

As often happens with a major study, a certain amount of misunderstanding has already arisen over the scope of the work. Unfortunately, some seem to have concluded that the Study and the recommendations will be directed solely at them. That is not the case. The Joint Resolution calls for a "motor vehicle accident compensation system study", and, indeed, the Congressional hearings were concerned primarily with the "system." No single element of the system can be studied in isolation from the others. The entire accident compensation system must be examined; not just the law, the bar, and the courts; not just the business operations of the liability insurance industry; not just the myriad potential sources of collateral compensation available to accident victims; not just accident causation and safety; and not just the public regulation of insurance. Each of these and other elements are interrelated and must be analyzed together.

Thus, while insurance premiums and industry practices have often been the focus of much public criticism, our Study is not concerned only with an examination of the insurance industry. We fully recognize, as I know you do, that many of the industry practices and procedures that have been criticized were developed in response to other parts of the system. And it is in the workings of the system as a whole that answers must be found.

The Study basically will have two major aspects: One, the development of the facts; and two, the development of recommendations.

With respect to the development of the facts, we hope that by the time we are finished there will be general agreement by all concerned that the facts are as found by the DOT Study. Some "facts", of course, will be difficult to determine and will involve projections or estimates, but even here, it is our hope that any differences of view can be carefully defined and areas of dispute narrowed and agreed upon as just that: recognized areas of uncertainty on which informed people can reasonably differ.

I do not think we are being overly optimistic in believing that DOT's description of the existing system can achieve general acceptance. As Executive Director of the President's National Advisory Panel on Insurance in Riot-Affected Areas I have dealt personally with this kind of problem and know that regardless of one's politics, or economic position, or professional background, serious men acting in good faith can look at a situation and objectively describe it.

Assuming that this will be the case, what about the second major aspect of the Study: the development of recommendations. Here the level of speculation requires that I reach for my crystal ball.

I should say first, that we start with no preconceived notions about what the recommendations should be. We are approaching the study with an open mind. It must be recognized, however, that our task is to search for improvements in the system, not defend the status quo. One of the assumptions underlying the authorization of the Study was that something was wrong. In establishing the Study, Congress specifically cited in the Joint Resolution the "growing evidence that the existing system of compensation for . . . loss and suffering is inequitable, inadequate, and insufficient and is unresponsive to existing social, economic, and technological conditions," and called for a "fundamental reevaluation" of the system.

We recognize these are strong words. They signify the strong Congressional desire to develop a better system. It may develop that there is nothing radically wrong. But the major assumption underlying the Congressional mandate is that the system is not as effective as it should be. And it is central to our task to determine how the system can be changed to better serve the needs of the Nation.

With these thoughts in mind I see three basic trends which I believe form at least an outline of what will come: (1) The supremacy of the consumer interest; (2) public interest partnership of government and business; and (3) creative federalism.

First, the last few years under President Johnson have seen major and unprecedented advances made on behalf of the consumer. Automobile and highway safety legislation lead the parade of consumer programs that also include such matters as pipeline safety, fair packaging and labeling, flammable fabrics, and truth-in-lending. The accident compensation study is itself part of this new priority accorded the consumer interest.

These individual pieces of legislation, as I see them, add up to more than the sum of them individually. They constitute a fundamental recognition that the consumer interest must be the principal guidepost of policy.

The relevance of this to the outcome of the automobile insurance Study cannot be overemphasized. Determining what the consumer wants and how it can be provided will be critical. Of course, we all know what the consumer wants in a general way: He wants the protection and security that are the root of any insurance system, as cheaply and easily as possible. It is in the details that the problem lies and where much of our effort will be spent.

In the months ahead we will be examining the operation of the system as it affects the accident victim, especially the person who suffers bodily injury. What happens to him and to his family? Does he receive compensation? Is it too little, too late, or too much? What are the sources of compensation? How does the mechanism by which compensation is dispensed operate? And there are many other similar questions.

We all need to know, factually, how the compensation system is operating now, followed by an assessment of what might be done to make it operate more effectively and in keeping with the needs and desires of the public. While it is obvious that complicated problems cannot be solved solely by public opinion polls, the opinions of the consumers are important. What types of losses do people think it is essential be covered by insurance? How highly do accident victims value prompt settlement of claims? What do people expect as recovery for pain and suffering? These and other questions must be asked.

It will ill behoove anyone in government or private industry to lose sight of the supremacy of the consumer interest. I know, of course, that you are a consumer-oriented industry and are constantly aware of this consideration. But it is good for us all to recognize that it requires constant attention if the consumer is to be served and to know that this is being done.

Turning to the second trend -- the public interest partnership of government and business -- I am referring to the growing number of cooperative efforts by government and private industry to meet pressing social problems. One of the most dramatic is the National Alliance of Businessmen which through the Jobs program is finding, training, and employing hundreds of thousands of the hard-core unemployed. Here is a problem that could not be solved by government or by business acting alone, but is giving way to a massive, cooperative effort by government and business.

The urban insurance program developed by the President's Panel is another example of this trend. The insurance industry could not alone bear the financial risk of catastrophic loss from riots and civil disorders without some form of backup protection that only the Federal Government could ultimately provide. And this backup protection was needed before the industry could carry out the task of making property insurance readily available in our Nation's cities. As a result of this program approximately 350 insurance companies have now purchased reinsurance from the Department of Housing and Urban Development, paying in premiums for reinsurance of over $25,600,000. These premiums and the $250,000,000 authorized to be borrowed from the U.S. Treasury now provide the protection to insurers that was necessary to permit them to meet the urban property owners' needs for insurance.

These business-government partnerships have been entered into in an effort to help industry better serve the public interest. The government's role has been generally limited to those aspects which industry could not perform. Primary emphasis, however, has been placed on developing means to permit private industry to perform as much of the task as possible. While this approach has been given new emphasis in the last few years, it has long been deeply rooted in American society.

Although they refer to it by different names or in different ways, it seems clear that both major political parties are committed to this

approach. There are those, of course, who say government alone can do things better and those who say business should never get too close to government. But when the chips are down, they are not the voices that are listened to. And it is in this trend of public interest partnership -- this spirit of cooperation -- that I predict the DOT Study will ultimately arrive in seeking any changes. The insurance industry can expect, I believe, to be asked to perform as great a role in our accident compensation system as it can effectively perform and as it is willing to perform.

It is not too early for the industry to begin this partnership with government by helping to assist in the Study. Its help, however, should not be limited to supplying information. It should also thoroughly examine its own methods of operation and the environment within which it operates in order to make recommendations for changes it believes necessary. In this way the insurance industry can help assure that important avenues of approach are covered and that the Department and other interests are in a position to carefully analyze the recommendations which the industry, with its unmatched experience with the system, believes best serves the interests of the public.

In saying this I do not mean to imply that we are asking the insurance industry alone to solve the problem. Its help and thoughtful recommendations, however, can materially aid in all aspects of the study and may help pave the way for eventual solutions.

We know that you have already started on this essential task of self analysis. We want to compliment you on the voluntary action you have already taken to develop more publicly acceptable underwriting standards and more responsive policy cancellation standards. But while these efforts are commendable, they represent only a beginning. Your stake in the accident compensation system is large. Your active contribution to developing solutions to the problem should be equally large.

Turning to the third trend -- creative federalism -- I refer to the growing pattern of cooperation between federal, state, and local government and the diminution of traditional tensions between levels of government. There have been times in our history when it was generally thought that the Federal Government could always do a task better. At other times it has been believed that only state or local

government should act. But today and particularly as a result of what has been pioneered in the past few years, the trend is toward decentralized responsibility and intensive inter-governmental activity. In numerous areas from crime control to highway safety, the pattern is for Federal aid to strengthen local action. Indeed, this trend has already affected the insurance area.

The underlying administrative approach of the National Insurance Development Program is to provide a Federal benefit -- reinsurance against the riot hazard -- as a stimulant for vigorous industry and state action to create a strong urban insurance market. Through this program the Federal Government has sought to lend its aid to strengthen the ability of the states to adopt programs to meet their own property owners' insurance needs.

I suspect the same cooperative approach will result with respect to automobile insurance. I do not believe the issue ultimately will be state or Federal regulation. Rather, the issue will be what can and should the states do and what can and should the Federal Government do, to best meet the consumers' needs. The focus will be on the formulation of creative relationships to solve the problem.

In saying this I do not mean to infer that some Federal regulation in the automobile insurance area is inevitable. That certainly is not the case. The tradition of state regulation of the insurance industry is deeply rooted in our system and is likely to be changed only on a strong showing that there is a necessary role which only the Federal Government can fulfill. Indeed, there may be no Federal regulation recommended. The Federal Government role might well be to provide, for example, improved safety standards, increased aid to the states for traffic control or perhaps a new statistical gathering mechanism, uniform laws, or a whole host of other possible roles. The essential task will be to identify those roles which each unit of government, working together, can best perform to provide the public with the fairest, most efficient and responsive accident compensation system possible.

I would be remiss, however, if I did not observe a cloud that looms over these basic trends. These are troubled times and our Nation at home and abroad is in a period of testing. I do not need to labor this with a group of distinguished insurance representatives like yourselves. For these troubles show up in your immediate business in a variety of

ways. Because of riots and disorders and too much substandard housing in some of our center city areas, it is harder to provide adequate fire and extended coverage insurance. Because of the mounting crime, it is harder to write burglary, theft, and the crime lines. Because of increased auto accidents, more expensive repair costs, rising medical expenses, it is harder to write automobile insurance at the same rates that once prevailed.

And surely if riots and disorders cease, and our cities are revitalized so that all have good housing, and the incidence of crime and accidents is brought down, then the insurance mechanism will function more efficiently for everyone in all these areas. For when the risk is brought down, the rates may be brought down, and the availability may expand.

But unfortunately, these good days are not yet in sight. And we must deal with the world as it is. This leads to the challenge of the DOT automobile insurance study: To get general agreement on the facts and the contours of the problem, to work out solutions that meet these problems, and to provide a framework for all concerned -- the insurance industry, lawyers, government at all levels, and above all, the consumer -- to cooperate to carry out that solution.

You ask, but what will the exact solution be. And I answer, it is impossible to tell until we get the facts established and are in a position to analyze carefully the effects of proposed changes in the system. There are at this point too many disputes over the facts to be clear exactly where the problems lie, and too many suggestions for change to even hazard a guess at specific solutions. The only thing that is certain now is that the Study will be conducted impartially and objectively. Everyone will be given an opportunity to present his views, and when the recommendations are made there will be a clear articulation of the reasons for each one, so that all will know that they have been dealt with fairly and can take an enlightened position on the recommendations.

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U. S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20590

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REMARKS PREPARED FOR DELIVERY BY STANFORD G. ROSS, GENERAL COUNSEL, BEFORE THE 37TH ANNUAL CONVENTION OF THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE AGENTS AT THE SHERATON-CHICAGO HOTEL, CHICAGO, ILLINOIS, MONDAY, OCTOBER 14, 1968, 4:00 P.M.

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It is always a welcome opportunity to speak on insurance because it is such an integral part of our American way of life. I know that you as the agents who form the critical link between insurers and insureds, are deeply aware that for most persons insurance is a vital necessity. It provides needed financial protection and psychological security against the possibility of tragic losses they alone cannot bear. For our society, this protection and security is essential to encouraging the savings and investment that is so important to the growth and development of our free enterprise-private property ownership system.

But these are troubled times and our Nation is in a period of testing. Many of the troubles facing us are now testing the strength of our Nation's insurance industry. Because of riots and disorders and too much substandard housing in some of our cities, it is harder for the industry to provide fire and extended coverage insurance. Because of mounting crime, it is harder to write burglary, theft and other crime lines. Because of increased auto accidents, more

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expensive repair costs, and rising medical expenses, it is harder to write automobile insurance at the same rates that once prevailed.

And, because insurance is such a vital necessity in our society, people are more and more looking to government - Federal, state, and local - to help them obtain the protection they need at a price they can afford. And government at all levels is responding to these understandable - and deeply felt - needs of its citizens.

One example of this governmental response is the urban insurance program developed by the President's National Advisory Panel on Insurance in Riot-Affected Areas, for which I served as Executive Director. There the Panel found that the insurance industry could not carry out the essential task of making property insurance readily available in the Nation's cities without some form of financial backup against possible catastrophic loss from riots and civil disorders. It was generally agreed that only the Federal Government could ultimately provide this protection. In response to the needs of homeowners and businessmen in cities across the Nation, the Congress authorized the Department of Housing and Urban Development to sell reinsurance against the riot hazard to insurers that make insurance available to urban property owners.

Another example of this governmental response to the insurance needs of our citizens is the Department of Transportation's $2 million, two-year study of the motor vehicle accident compensation system. This study, as you may recall, was authorized on May 22 of this year and funded on August 8. Because of the importance of this DOT Study to you as agents and to your clients, I would like today to discuss some of the background of the Study and indicate the immense proportions of the problems that must be dealt with by the Study.

The pressures on the compensation system are directly related to the size and dimension of our motor vehicle accident problems. There are today in the United States some 100 million autos, trucks, and buses, operated over nearly a trillion miles a year by approximately 100 million licensed drivers. These motor vehicles are involved in an estimated 10 million accidents or more annually. According to the best information available, these accidents in 1966 took 53,000 lives and caused 1,900,000 disabling injuries, leaving 160,000 permanently

injured. In more easily comprehended figures, this means that each day on the average there were 145 deaths and over 5,000 disabling injuries resulting from traffic accidents.

The dollar cost of these accidents is staggering. Injuries alone accounted for medical expenses of approximately $600 million. Actual and anticipated wage losses amounted to some $2.6 billion and property damage some $3.3 billion. And these figures are only a part of the cost. A substantial sum, perhaps as much as $3 billion or more, is spent by insurers in processing claims and in related administrative expenses. Additional hundreds of millions of dollars is spent by government for the operation of courts, accident investigations and other police traffic services for handling auto accidents and their aftermath.

While these figures are sobering enough, it is important that we keep in mind the hard reality that the situation may become worse. If current trends continue there could be by the end of the century nearly 300 million vehicles on the Nation's roads with more than twice the number of today's drivers.

The Federal traffic and motor vehicle safety programs enacted in 1966 and now administered by DOT offer encouragement that the toll of human life and injuries from traffic accidents can be reduced. The new energy absorbing steering assemblies now required on all new cars, for example, appears to reduce fatalities in certain crashes by as much as 70 percent. It has been estimated that if all cars had them, as many as 12,000 lives per year might be saved. Other safety devices such as seat belts, head restraints and crash padding, as well as new highway designs, all offer promise of substantially reducing the carnage and maiming that results from traffic accidents. Yet, it is still not clear that the absolute number of auto accident deaths and injuries is being reduced. And whatever our hopes for the future, we must deal with the situation as it is.

It is thus absolutely essential that we have an efficient, equitable system for providing compensation to those who are injured and to the dependents of those who are killed in accidents. At present this system is primarily comprised of automobile insurance and the tort liability system which determines who may recover and how much. Other sources of compensation such as health insurance and workmen's compensation, however, cannot be overlooked.

The history of the DOT accident compensation system Study goes back to October 1966 when a bill was introduced to establish a Federal Motor Vehicle Insurance Guarantee Fund to help protect policyholders from insurance company insolvency. It soon became evident, however, that company insolvencies could not be treated in isolation. Hearings on that bill brought forth many citizens' complaints about a whole host of automobile insurance problems. The issues were many and complex. A preliminary automobile insurance study by the staff of a House Judiciary Antitrust Subcommittee conducted in 1967 resulted in a recommendation that further study of the insurance industry be undertaken by the Federal Trade Commission. Others felt, however, that any detailed study should go beyond insurance industry practices and cover the entire motor vehicle accident compensation system.

In late 1967 legislation was introduced authorizing a broad scale DOT Study to be conducted in cooperation with the Federal Trade Commission and other knowledgeable Federal agencies.

As a result of the President's strong endorsement, hearings on this legislation were held during the early part of 1968. Virtually everyone who testified on the proposal was concerned about the adequacy of the accident compensation system and expressed an urgent desire for prompt and sound corrective action. Indeed, some Congressmen wanted to begin hearings on specific legislative proposals for change and others felt a study by a Congressional Committee could provide more prompt recommendations for solution. In the end, however, the DOT Study was a widely supported bipartisan effort, receiving virtually unanimous approval in the House and Senate.

As an accommodation of some of the views expressed during the hearings, it was agreed that any examination of the automobile insurance business to be undertaken by Senator Hart's Antitrust Subcommittee could be of substantial benefit and should not be precluded by the DOT Study. It is our intention to utilize the information developed by Senator Hart's Subcommittee wherever practicable to assist us in our own Study.

By these and other actions Congress has made clear that it wants to avoid hasty and ill-conceived solutions to the problems. It is now widely recognized that there must first be a comprehensive analysis of the problems in all their aspects and a full and frank development of

whatever steps must be taken to meet the problems. And the DOT Study is a response to this clearly expressed National need.

The task ahead for the Study staff will be difficult and complex. The exact nature and extent of the problems with the accident compensation system are yet undefined.

Many complaints, however, keep recurring. There is serious concern, for example, over the rapid increase in auto insurance premiums. Although these premiums have not increased as rapidly as some of the expenses the insurance must cover, such as wages and medical expenses, there nonetheless is considerable public concern about the increases. On the other hand, some insurers contend that premiums are too low, citing to substantial underwriting losses sustained by insurers.

Some charge that accident victims receive too little of the total amount of premiums that are paid to insurers, pointing to statistics that show that less than half of the dollars collected by insurers are paid directly to accident victims. Others contend that when amounts spent on behalf of the insured are added to this, auto insurance pays back in benefits to policyholders and claimants more than 75 cents out of every premium dollar charged.

There are charges that claims for compensation are processed slowly and inefficiently, often leaving the accident victim without means to pay his expenses. On the other side of the debate, it is pointed out that some studies show that almost 90 percent of claims are paid within one year.

Many complaints concern cancellations or refusals to write auto insurance on grounds the public regards as arbitrary or inexplicable. Charges are made that the elderly, the young, members of the military, and Negroes and members of other minority groups are particularly subject to such practices. Those who are cancelled or refused insurance by one company say that they cannot get it from another and must look to assigned risk plans for coverage. These plans too are criticized because of high cost and the minimum protection available through them. Insurance industry spokesmen counter that the industry has recently taken steps on a voluntary basis to assure that underwriting decisions will be based on the individual driving record of the applicant.

The distribution of compensation is said to be uneven and perhaps inequitable. It has been estimated that from 14 to 23 percent of those who are injured receive nothing. Some estimates run higher. When compensation is received, some studies have shown that small claims are overcompensated while large claims are under-compensated.

More fundamentaly perhaps, it is charged that our traditional tort liability system for compensating motor vehicle accident victims is inefficient and unjust. This system is based on a legal concept of fault which some argue is outdated and in need of reform.

Some contend, for example, that there are too many problems in determining fault in a traffic accident. It happens too fast, and there are too many factors for the concept to work realistically. Moreover, it is urged that the fault system clogs our courts with auto accident cases that hold up decisions on other matters. On the other hand, others contend that our centuries old tort liability system has served us well and its benefits should be continued. They warn specifically about losing the flexible means of compensating for diverse injuries that is available through the present legal system.

These, of course, are only a few of the charges and counter charges made with respect to the system. There are many others. We cannot now say who is right or wrong. That determination must await the outcome of the Study. We do think, however, that the public is entitled to an unbiased examination of the facts and careful analysis of the arguments to the end that we may have the best compensation system practicable.

We, therefore, are approaching the Study with an open mind. We have no preconceived notions as to what are the exact problems or what the recommendations should be. We have no intention of trying to fix the blame for problems on specific entities. The problems at this point appear interrelated and not the fault of any one group or practice.

It must be recognized, however, that our task is to search for improvements in the system, not defend the status quo. One of the assumptions underlying the authorization of the Study was that something was demonstrably wrong. In establishing the Study, Congress specifically cited in the Joint Resolution the "growing evidence that the existing system of compensation for . . . loss and suffering is inequitable, inadequate, and insufficient and is unresponsive to existing social,

economic, and technological conditions," and called for a "fundamental reevaluation" of the system.

These are strong words. They signify the strong Congressional desire to develop a better system. It may develop that there is nothing radically wrong. But the major assumption underlying the Congressional mandate is that the system is not as effective as it should be. And it is central to our task to determine how the system can be changed to better serve the needs of the Nation.

In the months ahead we will be examining the operation of the system as it affects the accident victim, especially the person who suffers bodily injury. We need to know, factually, how the compensation system is operating now, followed by an assessment of what might be done to make it operate more effectively.

We also need to determine what the consumer wants and how it can be provided. Of course, we all know what the consumer wants in a general way: He wants the protection and security that are the root of any insurance system, as cheaply and easily as possible. It is in the details that the problem lies and where much of our effort will be spent.

While it is obvious that complicated problems cannot be solved solely by public opinion polls, the opinions of the consumers are important. What types of losses do people think it is essential be covered by insurance? How highly do accident victims value prompt settlement of claims? What do people expect as recovery for pain and suffering? These and other questions must be asked.

We are well underway on our task. A nucleus of a staff of economists, lawyers, statisticians, insurance experts and others is now hard at work and additional recruiting is underway. A sizable roster of distinguished consultants is being established and extensive use of them is planned. Other Government agencies will also be called upon for major contributions.

The day-to-day work of these experts will be conducted under the general supervision of the Assistant Secretary for Policy Development. But final responsibility for the Study rests in the Secretary of Transportation. Thus the Secretary with the aid of Departmental officers will have the job of finally deciding the nature and content of the Study. As General Counsel, I have particular responsibilities with respect to the legal aspects of the Study.

We cannot, however, conduct this Study alone. We will need help and assistance from as many persons and groups as possible.

We will shortly be appointing Advisory Committees that are broadly representative of various interested groups such as the insurance industry and legal profession, and of the public generally. These Committees will be kept fully informed of the work as it progresses, will make suggestions, and will help to insure the kind of close cooperation that is vital to a successful Study.

But our lines of communication will not stop there. An "open door" policy will be pursued that goes much beyond the formal Advisory Committees. We are seeking as broad a spectrum of views as possible. No one should refrain from contacting the Department if he has information or views which he believes merit consideration. In brief, we do not want any individual or any group to feel excluded just because they were not invited to sit on this or that committee or attend this or that meeting.

Agents and their organizations, of course, are in a unique position to contribute to this Study. You are the front line of the insurance industry. Through your contacts with your clients you have an opportunity to gauge the type of protection they feel is essential to meet their needs and to learn the dissatisfactions they express with their present coverage. Your views on the operation of the system are important. They can materially aid us in the Study and may well help point the way to solutions.

I cannot emphasize too strongly, however, that we need your views and ideas as soon as possible. The deadline for our report is May 1970, only 19 months away. While this may seem like a long time, it is not in view of the enormity of the issues that must be carefully analyzed.

I can assure you that our Study will be conducted impartially and objectively. Everyone will know what we are doing at every stage, and I am confident will feel they have been dealt with fairly. For in the end, if we can provide a framework within which all concerned - the insurance industry, lawyers, government at all levels, and above all, the consumer - can cooperate to seek a solution, we will have performed the most vital service of all. This is the challenge before us, and with the help of you and others who are vitally concerned, we hope to be successful in meeting it.

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U. S. DEPARTMENT OF TRANSPORTATION
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WASHINGTON, D. C. 20590

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REMARKS PREPARED FOR DELIVERY BY STANFORD G. ROSS, GENERAL COUNSEL, BEFORE THE SOCIETY OF CHARTERED PROPERTY AND CASUALTY UNDERWRITERS AT HARTFORD, CONNECTICUT, TUESDAY, OCTOBER 29, 1968, 1:00 P.M.

I am delighted to be here today to join in wishing continued success to the new designees of the C.P.C.U. The years ahead, I am sure, will offer many exciting and rewarding challenges which your professional training will help prepare you to meet.

Many of these future challenges in the insurance industry will arise out of the dynamic growth and dramatic changes that are now occurring in the field of transportation. About half of the insurance premiums in the United States are paid to cover possible property and liability losses connected with transportation activities. Your interest in transportation, therefore, is not only that of the concerned and interested citizen, but also that of the concerned and knowledgeable professional.

No matter how we look at it, transportation is an enormous factor in American life. The average American family of four with

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an income of $10,000 spends more on transportation than on anything else except food. It spends more on transportation than it does on housing, clothing, education or taxes. At present, our Nation's investment in transportation facilities amounts to some $500 billion and substantial additional committments are being made every day. Transportation accounts for one out of every six dollars spent in the economy. It provides jobs for some nine million people.

But vast as this system is today it must continue to grow at a breathtaking rate to keep pace with the demands of our increasing population and growing economy. If the demand for transportation continues to match America's expected economic growth, we will have to double in less than twenty years the present capacity of a system that has taken the lifetime of a Nation to build. And even this may be a conservative estimate -- passenger transportation is now growing even faster than the gross national product, reflecting the desires of an affluent population with ever increasing incomes.

Make no mistake, we have a magnificent transportation system, the greatest by far of any country in the world. But the growing demands on this system are making increasingly evident its limitations. Congestion at our Nation's airports, crowding on our highways and city streets, are now causing costly delay, waste, frustration and mounting discontent with transportation services and facilities. Meeting the requirements for the concentrated growth that must occur to match the future transportation needs of America will require the dedicated and cooperative efforts of all - private industry and government -- who are responsible for providing this service.

The Department I represent is a response to the challenge presented by transportation. Congress, at President Johnson's request, created the DOT a little over 18 months ago. It combined 30 different programs to form the fourth largest Cabinet-level department in the Federal Government, employing close to 100,000 people with an annual budget of over $6 billion. The Department's major components are the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Coast Guard, the Urban Mass Transportation Administration and the St. Lawrence Seaway Development Corporation. The Department now has

responsibility for the Federal Government's major promotional and safety programs in transportation. The Secretary of Transportation, under the direction of the President, is designated as the Federal official to exercise leadership in national transportation matters.

The principal task of the Department is to develop national transportation policies and programs that will be conducive to the provision of a fast, safe, efficient and coordinated transportation system at the lowest cost consistent with other national objectives, including the efficient utilization and conservation of the Nation's resources. But as monumental as that task may sound, we are finding it is even more monumental to accomplish in practice.

We find, for example, that we cannot deal with transportation problems in isolation. We must consider the impact on people of dislocation, noise, air pollution and distruction of the landscape and recreational areas resulting from transportation decisions. We have come to recognize that we cannot think of transportation only as a carrier of passengers and goods. It is also an integral part of our society and our environment, capable of enhancing our lives or making them all but intolerable.

We are also becoming increasingly aware of the vital importance of insurance to the growth and development of our Nation's transportation system. The basic elements of the transportation system are organized on a private enterprise basis. Without adequate insurance, transportation industries cannot attract the capital that is needed to build and operate the new and expanded system that is required. As our transportation network grows so must the capacity of the insurance industry to provide it with needed financial protection.

With our responsibilities for helping to develop our Nation's transportation system, we are therefore concerned with the ability of the insurance industry to respond to the future challenges of transportation. We recognize the insurance industry's already heavy committments in transportation and the great role it presently plays. There are unfortunately, however, disturbing signs that the ability and willingness of the industry to meet the expanded insurance needs of our transportation network is being strained. For example, on the Boston to New York leg of the DOT's high-speed rail passenger demonstration project, the New Haven Railroad so far has been unable

to obtain the liability insurance it believes it needs to begin passenger operations. The problem is not a matter of cost. Rather it involves a basic inability to obtain needed coverage for an admittedly new project with major uncertainties.

The Boston to New York demonstration and the New York to Washington demonstration together represent an approximately $100 million rail project being financed jointly by industry and government. The goal is to provide improved and more rapid passenger service in the congested Northeast Corridor. It will provide vital information to the government and private industry to determine whether improved rail passenger service can attract people from our overcrowded airways and highways in this corridor and thus provide a current answer to one of our Nation's most pressing transportation problems. One way or another the demonstration project must go forward -- the question is what role the private insurance industry will play.

Commercial airlines too have become concerned about their ability to obtain, at what they consider reasonable rates, needed hull and liability insurance on the new jumbo jets, airbuses and the proposed supersonic transport. Airlines world-wide have already committed some $15 billion dollars to buy these new planes and intend to commit more. But the airlines need insurance if they are to operate their planes without unbearable economic risks -- a plane crash could result in property and liability losses of as much as $200 million.

To resolve this problem the air transport industry is proposing to form an insurance company to be owned by participating carriers which will insure through it. Although the final plans have not yet been revealed, the airlines reportedly are contemplating initial premiums of $200 million plus additional deposits of possibly $275 million to meet reserve requirements. This industry-owned insurer, however, is not designed to provide the airlines' total insurance requirements. Instead, the industry is planning to use this new company in conjunction with the regular insurance markets, to provide the increased insurance capacity believed to be necessary in the coming years.

Shipowners too are expressing difficulty in obtaining the full insurance coverage they need. The advent of the new supertankers will place new strains on the present limited market for maritime coverage. Moreover, insurers are beginning to charge more for coverage on older ships which tends to place the owners of these vessels at a competitive disadvantage in world shipping. This is a matter of increasing concern to our own maritime industry which operates with a number of older ships.

The capacity -- defined as ability and willingness -- of the insurance industry to meet the growing need for auto insurance has also been questioned before Senator Hart's Antitrust Subcommittee which is investigating the auto insurance business. Clearly, this is an area that must be carefully evaluated by DOT's own two year, $2 million dollar study of the motor vehicle accident compensation system.

Insurance capacity problems, of course, are not limited to transportation. Property insurance, especially in the blighted sections of our cities, has not been sufficiently available to meet public needs. The recently enacted National Insurance Development Program to provide reinsurance protection against the riot hazard is one attempt to help meet this problem. Indeed, one of the factors leading to the development of the program was concern over the ability of private reinsurance to provide the protection needed by primary writers in our cities. Since a large amount of this reinsurance is placed abroad, this business is beyond scrutiny for public interest considerations of our governmental regulatory bodies - state and Federal. Thus, the new Federal Insurance Administrator of the Department of Housing and Urban Development has been charged with the responsibility for carefully studying reinsurance and its implications to the American markets.

Attention is also being directed at determining the effect of the growing acquisition and holding company phenomenon affecting the insurance industry. This recent trend holds the possibility of disinvestment of capital in the industry at a time when more capital seems to be needed to meet the Nation's growing insurance needs. To date no intensive study has reported on the actual impact on the insurance markets of the acquisition of insurers by non-insurance companies or the

formation of insurance holding companies to make investments outside the industry. Such information, however, will be essential to fully evaluate the effects of these changes in the industry and on its overall capacity to provide insurance. We are awaiting the publication of a study of conglomerates now being conducted by the Federal Trade Commission before determining whether further study will be required by the DOT accident compensation study.

The demands on the capacity of the insurance industry with respect to transportation is directly related to the number of losses that occur and the potential for losses. DOT now has more personnel engaged, directly and indirectly, in safety functions than any other activity. This is vital activity to preserve life and one that must be performed as well as is humanly possible. To the extent our efforts in this area reduces accidents and the severity of losses, they also can be seen as facilitating the ability of the industry to meet the insurance needs of transportation activities.

The safety record in transportation varies widely between the different modes. The aviation safety record has been relatively better than that in other modes. Approximately 1,500 Americans die each year in aviation accidents; 1,700 in commercial and recreational boating and shipping accidents; and close to 2,500 in railroad related accidents. But while we must strive to improve these figures, the record on our highways is a national tragedy. According to the best information available, motor accidents in 1966 took 53,000 lives, caused 1,900,000 disabling injuries and left 160,000 permanently injured.

We are working on ways to reduce the toll of lives lost in transportation mishaps. We are placing increasing attention on the more neglected modes. Natural gas pipeline safety legislation was enacted recently. The Department this year introduced legislation to provide us with greater authority to improve railroad safety. We also proposed legislation to permit us to take action to improve safety in recreational boating.

In 1966 Congress, at President Johnson's urging, enacted Federal traffic and motor vehicle safety programs. These programs now

administered by DOT offer encouragement that the toll of human life and injuries from traffic accidents can be reduced. The new energy absorbing steering assemblies now required on all new cars, for example, appears to reduce fatalities in certain crashes by as much as 70 percent. It has been estimated that if all cars had them, as many as 12,000 lives per year might be saved. Other safety devices such as seat belts, head restraints, and crash padding as well as new highway designs, all offer promise of substantially reducing the carnage and maiming that results from traffic accidents. Increasing attention is also being given to devising means to provide more prompt post-crash medical care to more adequately treat the crash victim. Some of our ideas in this area are rather dramatic. For example, we are financing studies of the use of helicopters as experimental air ambulances to help provide the prompt medical attention that can cut highway mortality rates.

In addition to these developments the DOT must consider the possibility of conducting research to develop ways to reduce the cost of repairing damaged vehicles which in turn could lead to lower auto insurance costs. It has been estimated that 40 percent of insurance settlements involve cases in which there is no personal injury, only property damage. It has been further estimated that of these roughly 90 percent to 95 percent involve only repair to the exterior shell of the car. It would seem that some reductions in insurance claims could be made if these exterior shells were designed to reduce the cost of their repair.

It is interesting to note, for example, that no American or foreign automobile can be hit as hard laterally without damage as the little electric "dodge-em" cars at amusement parks. The impacts which cause no harm to these cars can result in very expensive repairs to the cars in which we trust our lives on the highways. Of course, most people do not seem to want a car designed like these little amusement park cars, yet some consideration needs to be given to encouraging design and structural innovations that can reduce the costs of repairing minor body damage.

Despite these safety efforts and loss reduction activities, the dramatic growth in transportation has resulted in an increase in the absolute number of accidents and losses in the past. Although we can

see progress being made in reducing the rate of the increase, we have no cause for doing anything but keeping our efforts for improvement at a maximum.

The dynamic growth of transportation is not only placing strains on insurance capacity, it is also placing strains on the legal framework under which the insurance process operates. Contrary to some popular belief there is really nothing mystical about the law. It is basically a reflection of the way the society in which we live orders itself to solve problems. As this society changes, as its values change, as its goals change, the law too changes.

Changes in transportation have already brought about suggestions for change in our tort liability system which determines who may recover and how much from accidents. More and more people are beginning to ask whether a combination of safety regulation and insurance can replace our system of tort liability which was designed to operate both as a deterrent to negligent actions or willful misconduct and a means of compensating the victims of accidents. Developments in this area can have significant effects on the insurance industry for it affects the kind and amounts of coverage persons must seek to cover potential losses and the costs incurred by the insurance industry.

The tort liability system is based on a legal concept of fault that is deeply ingrained in our Nation's social consciousness. It has served us long, and in the opinion of most, it has served us well. Yet a number of questions are now being raised with respect to the tort liability system in the transportation field, especially as it relates to the future. For example, some argue that as applied to auto accidents, it is now outdated and in need of reform. It is contended that there are too many problems in determining fault in traffic accidents -- they happen too often, too fast, and there are too many factors involved for the concept to work realistically. Moreover, it is urged that the fault system clogs our courts with auto accident cases that hold up decisions on other matters. These, and other such charges, of course, will have to be looked into carefully by our DOT accident compensation study.

Several alternatives for reform have been suggested. One of the more frequently discussed proposals is the Basic Protection Plan proposed by Professors Keeton and O'Connell. This plan would replace the existing fault system in traffic accidents with a system to compensate all persons injured regardless of who was at fault where economic loss is less than $10,000. A person would go to court to recover economic losses in excess of $10,000 and losses from pain and suffering in excess of $5,000, the first $5,000 of such loss being unrecoverable. A recent study made public by the American Insurance Association disclosed that under the Basic Protection Plan the premium for the average auto insurance policy studied could be reduced 28 percent. The AIA, however, had several objections to the Keeton-O'Connell Plan and recommended a complete no fault automobile compensation system under which premiums on the average auto insurance policy studied could be reduced by 29 percent.

Such reductions in premiums could both reduce insurance costs to consumers as well as free industry capacity now utilized to insure the greater potential losses to insurers that exist under the present system. But as attractive as these benefits may seem we cannot overlook the advantages of the present legal system, not the least of which is the flexible means it provides for compensating for diverse types of injuries. As General Counsel of DOT, I have particular responsibilities with respect to the legal aspects of the study and can assure you that we will make no decisions in this area until all the facts are in and they have been carefully analyzed.

The auto accident, however, is not the only transportation area where the fault liability system has come under attack. In the field of international aviation the United States has taken steps to secure from international carriers a waiver of the $8,300 liability limits of the Warsaw Convention and the $16,000 limits of the Hague Protocol for damage to property and personal injury arising out of international air travel. Under the 1966 Montreal agreement secured by the United States, air carriers have now agreed to assume absolute liability for damage of up to $75,000, including attorney's fees, for personal injury or death arising out of international air travel. These limits, however, only apply to travel to, from, or over the United States.

This Montreal agreement is regarded as only a temporary measure. Discussions will soon be held by the Legal Committee of the International Civil Aviation Organization representing various of the world's governments to determine whether a uniform rule of liability and recovery limits can be adopted for all international air travel. One of the principal arguments being made in opposition to adopting on a world-wide basis the limits established by the United States' agreement is that it would cause increases in liability insurance premiums for airlines and, ultimately, increased fares for their passengers. On the other hand, the evidence on cost is not in, and this like other such issues involves a complicated balancing of competing considerations such as the needs and desires of passengers for greater protection in order to determine what the ultimate answers should be.

Suggestions also are being made by some that the principle of absolute liability, perhaps in conjunction with an insurance system, should be extended to domestic air transport activities. Apart from the liability issue, legislation has recently been introduced to improve the judicial process for handling domestic air carrier accident cases.

Changes are also being proposed in the maritime area. DOT, for example, has sponsored a bill in Congress to provide for unlimited liability for damages suffered as a result of death or personal injury caused by vessels. At present a plaintiff's right of recovery is limited by statute to $60 per ton of the vessel's tonnage unless the plaintiff can prove the owner had "privity of knowledge" of the matter leading to the loss. As a result of the losses from oil pollution arising out of the Torrey Canyon disaster, and other such incidents, legislative and international efforts have been started to require vessels to assume a greater portion of the financial losses resulting from such catastrophies. Any action in either of these areas would presumably cause the maritime industry to seek additional insurance protection.

Technological developments in the use of containers in transportation has also raised questions about the fault concept. It is now entirely feasible to load a container at a manufacturing plant anywhere in the United States, move the container by truck, or rail to a seaport or airport, ship the container overseas and then move it to a destination inland in Europe, without once breaking the seal on the container. It

seems clear to some, that when cargo is so shipped it will be difficult, if not impossible, to determine where any damage to the cargo may occur. They argue that to even attempt to ascertain the condition of the cargo at various stages of shipment militates against realizing the full benefits of this advance in technology. Some thus urge that fault then can play no part in determining who must compensate the shipper for loss. Regardless whether they are right, insurance undoubtedly will be called upon to provide the protection the shipper will require.

These are only a few of the changes in transportation that vitally affect the insurance industry. There are many others. It is becoming increasingly apparent, for example, that to move people in our cities safely and efficiently we must give increased attention to developing new and improved urban mass transportation systems to help eliminate the congestion on our city streets. Developments in this area too will affect insurance. It has been estimated by the Institute for Rapid Transit that eliminating the drive to work in Los Angeles, for example, could save auto drivers as much as $70 a year in reclassified car insurance.

All this rapid growth and pressure for change, and the stresses and strains it places on our transportation network, our insurance system and our legal framework, should not be seen as causes for alarm but as challenges to our ingenuity. I am confident that the problems before us can be solved and that the public can be well served in all these areas. I am equally convinced that this can best be done by the close cooperation -- the creative partnership -- of government and business. Our challenges can be met if we all work together to achieve our common goals.

As recognized insurance professionals and industry leaders it is important for you to continually keep abreast of the changing social, political and economic conditions in our society which pose new insurance problems. Moreover, you must continually strive to seek new ways to improve the insurance process -- through new coverages, improvements in loss control methods, and improvements in the total social-legal structure through which the insurance process operates. And you should pass your ideas along to others who may be in a position to join with you in fostering action which you individually cannot carry

out. I assure you, for example, that DOT would appreciate any suggestions you may have for improving the motor vehicle accident compensation system, or any of the other problems I have touched on today.

Those of you who do these things will find, I believe, that insurance offers not only a financially rewarding career, but also one that provides great personal satisfaction from knowing you have played an important role in helping to provide an essential service -- insurance -- to help build and improve a great Nation.