

Statement of Secretary of Transportation John A. Volpe  
Before the Subcommittee on Commerce and Finance,  
House Interstate and Foreign Commerce Committee  
April 20, 1971

"Motor Vehicle Crash Losses and  
Their Compensation in the United States"  
A Report Submitted in Compliance with P. L. 90-313

Mr. Chairman and Members of the Committee:

I'm very happy to be here today to discuss the final report of the Automobile Insurance and Compensation Study called for by P. L. 90-313.

The research findings of our Study are largely contained in a series of published reports which now number twenty-three. Our policy findings and recommendations are included in the report we are submitting to you today. This final report summarizes the principal factual and judgmental findings of the Study, analyzes the basic alternatives to the present system, and makes a tentative judgment as to what should be done by way of change in the future and how that change should be accomplished.

No end would be served by reviewing once again the problems and disabilities of the existing auto accident reparations system. You have heard them recited before, and they are detailed in the various reports of the Study. Moreover, there appears to be a very broad and heartening consensus among nearly everyone concerned -- the industry, many elements of the bar, consumer spokesmen, insurance regulators, and legislators and executives at all levels of government -- that the present system is not working well and should be changed.

Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus; the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc. Our report, without trying to be exhaustive, discusses the broad range of the principal alternatives and some of the advantages and disadvantages of each. I am certain that your hearings will do much to draw out the merits of the various approaches.

What I would like to address principally this morning are our recommendations. Several rather important considerations or judgments have influenced the framing of these recommendations. I would like to mention some of them and discuss one of them at some length.

First, it seems clear, at least to us, that there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go in changing the reparations system. It is also clear that there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We,

ourselves, don't claim to have definitive answers to these questions either. As a result, it seems to us that we should seek change in a way that maximizes the prospects for truly useful reform; in ways that built on and use changes already under way and those soon to follow. In our judgment the route that offers this prospect is the route of State action, but State action consistent with the broad outlines or principles of a system such as that I will describe. Now we need not, and thus do not insist that a single reform system be imposed upon all the States. The varied experience of the States as they move to reform should have much to tell us about the most desirable ultimate configuration of the motor vehicle reparations system. In short, considerable similarity of systems is a proper goal, but instigation by standardized Federal directive at this time seems the less attractive course. To be sure, because motor vehicle travel is so much an interstate activity, States should attempt to develop similar reparations systems, and we propose to help them do so. Thus, while we find great intrinsic merit in the State system of insurance regulation, and in ultimate State control of decisions regarding their own reparations systems, some kind of broad advisory national goals or standards, carrying Congressional endorsement, would seem to be very useful and appropriate.

One of the reasons for our belief in the viability and desirability of change in the auto accident reparations system via the State route is that change at that level has clearly moved off dead center and would

appear to be achieving some momentum. That statement could not have been made a year ago, and I might add that I think the Study which the Congress mandated has been a contributing factor. I think that this constructive State movement should be strongly encouraged, perhaps guided and helped, but not preempted by Federal action. I want to come back to this matter later.

With those general remarks, let me turn to the recommendations themselves.

#### SUMMARY OF RECOMMENDATIONS

We believe that the States should begin promptly to shift to a first-party, non-fault compensation system for automobile accident victims.

We believe that this can be done in such a way that we can reverse ourselves, if the actual performance of the system doesn't meet our expectations.

We believe that recovery for "general" or intangible damages should be drastically limited and carefully circumscribed.

We believe that our relevant institutions, public and private, and the citizens who man them, should be given adequate time to plan for, adapt to and assess the performance of a new system.

We believe that the change should take place at the State level, but that there should be general national goals or principles toward which the States will be moving.

We hope that there would be a minimum of argument over whether full implementation of a no-fault auto accident reparations system would or would not result in cost savings to the public. We believe that the long-range financial impacts of such a fundamental change simply cannot be predicted with any reasonable precision. To be sure, the logic of this situation does imply cost savings under a no-fault system, and we discuss this in our report. Nonetheless, we should not allow ourselves to be unduly distracted by those who wish to argue the question one way or the other. There are other, more important reasons for change which are not in my judgment debatable. And so, as various first-party, no-fault plans are implemented in the States, answers will be forthcoming as to which variant of the program we advocate works better than the present system. By this State development route, the country may be able to spare itself most of the uncertainty, and greatly reduce the financial risk, that would be involved in any single step, "all the way," perhaps irreversible change of the system. A logical first step, for example, might be designed to give confidence that the added costs of ensuring full medical coverage to all victims would be offset by the "savings" achieved by revising the rules on general damages. Thus, the pace of reform should allow the States to absorb changes in digestible and reasonably predictable amounts and allow them to reverse gears or slow down, or speed up, as experience indicates.

Let me describe more specifically the broad outlines of a possible ultimate system which we believe is consistent with the findings and conclusions of our study and the principles we endorse. The policy limits and deductibles I will use should be recognized for what they are -- illustrative. (Our Study findings do indicate that they are in appropriate orders of magnitude.)

#### AN ILLUSTRATIVE SYSTEM

We believe that the present system needs change badly, and needs it now. Based on our extensive study, we believe that the most promising avenue for changes which will better serve the driving public is in the direction of a first-party, no-fault system, combined with modification of the rule on general damages. Recognizing that a little observation is worth a great deal of speculation, we think that a system like the one described below shows the most promise.

#### Compulsory First-Party Benefits

Every owner of a motor vehicle would be required to carry insurance protecting himself, his family and every uninsured passenger or pedestrian suffering injury as a result of an accident involving the insured vehicle for all economic losses they thereby incur, subject to reasonable limits and deductibles. In addition, the insurance should protect the insured and all members of his family who are part of the same household against losses suffered when they are pedestrians or passengers in another vehicle.

. Required Medical Benefits

Full coverage for all medical benefits should be provided with a relatively small permissible deductible per accident but with very high mandatory limits. Any deductible or limit voluntarily assumed by the car owner on behalf of himself and his household would not apply, however, to the medical losses of uninsured pedestrians. Included in covered benefits will be all medical rehabilitation expenses within the limits provided. Coverage should be primary as among private systems -- that is, payment of benefits by a carrier under this coverage should automatically remove the obligation of any other insurance carrier to pay benefits to the extent that the costs are covered by automobile insurance. However, there should be the greatest freedom open to the insured in selecting his choice and source of coverage.

. Income Loss Protection

Coverage would have to be afforded for a relatively high percentage of earned income of the injured or deceased auto accident victim. There should be a short permitted waiting period at the option of the insured for the start of benefits and a permitted monthly benefit ceiling by the insurer of perhaps \$1,000. Voluntarily assumed deductibles or limits would not apply to uninsured pedestrians. Higher benefits could be made available at the options of the insurer and insured.

This coverage might pay wage continuation benefits any time an injured person is prevented from working, either as a result of his disability or as a result of his participation in an approved rehabilitation program. The benefit program should provide for modification as provided contractually between the insurer and insured because of changed circumstances, e. g. , the remarriage of a surviving spouse, surviving children reaching their majority, etc.

The minimum duration of mandatory income loss protection should, and probably could, be finally established only after some further investigation and experimentation. Initially, minimum duration might be set at three years, except for victims in approved rehabilitation programs whose protection would continue as long as necessary. Longer durations should be optionally available from the beginning and should also be considered for inclusion in the mandatory coverage as experience dictates. A lump sum mandatory burial benefit of perhaps \$1,000 per person could be included.

#### Lost Service Benefits

Minimum coverage for the cost of necessary replacement services for non-employed persons (e. g. , housewives) could be required up to a benefit of perhaps \$75 per week, with a permitted waiting period for benefits at the option of the insured. Minimum duration of mandatory protection might be the same as for income loss.

### Property Damage

Coverage of damages to property, including the insured vehicle, might be required, but with a permissible deductible referable to the vehicle only at the option of the insured of up to a rather high level, perhaps \$1,000 or a third of the value of the car, and with a permissible limitation of coverage by the insurer of \$10,000 per accident. There would be no deductible with respect to the non-vehicular property of others damaged in an accident. The goal should be to offer the widest possible choice of coverage to the insured on a first-party basis.

### Elimination of Action for Damages

No recovery for any loss covered by the applicable required coverage would be permitted in any private action for damages. The insured victim's sole recourse for benefits for wage loss, medical loss, lost services, funeral expense (and property damage) should be limited to the insured's required coverage and any additional optional coverages that he has elected to purchase, whether under an auto insurance policy or other voluntary loss reparation program.

The existing right to sue for damages resulting from negligence in car crashes might be drastically curtailed, perhaps remaining only for intangible losses subject to a limitation: no person should recover for intangible losses unless he established that he suffered permanent impairment or loss of function or permanent disfigurement, or that he

incurred personal medical expenses (excluding hospital expenses) as a result of the accident in excess of a rather high dollar threshold. The dollar threshold initially chosen should not be considered inviolable but should be reviewed as to its appropriateness at regular, specified intervals.

Drivers should, of course, be allowed to continue to insure against this residual third-party liability.

#### STATE OR FEDERAL ACTION NOW?

Understandably, given the rather remarkable degree of consensus that a no-fault solution to the auto accident reparations problem is necessary, interest has gravitated to the issue of whether reform should take place at the State level or Federal level. Obviously, good arguments can be mounted on both sides. Federal preemption was one of the alternatives we looked at closely, but was rejected. I would like to review some of the reasons for our doing so.

One reason, of course, was that this Administration believes strongly that the functions of government should be performed and the effective decisions of government should be made as close to the people as possible. This is a principle that I personally believe in deeply.

But there are other reasons which transcend political philosophy. It seems clear to us, from our study, that the insurance institution including State regulation of insurance, has been held at fault for intrinsic inadequacies in the reparations system itself. In most instances, the

basic problems lie in the inadequacy of reparation for the seriously injured or killed, the overcompensation of the minimally injured and the wasteful administrative costs of the system.

It is unfortunate that insurers, in general, have failed to convey to the public and to their legislative representatives that the auto insurance institution inherited a faulty public policy, a policy that has vainly attempted the impossible task of melding tort liability and indemnity insurance into a workable and efficient reparations system. Too often insurers who should have devoted themselves to seeking out the optimum reparations system have chosen to assume the role of advocates for whatever cause seemed best suited to enhance or preserve their market positions. Moreover, insurance regulatory officials have, in general, failed to make clear that they are the captives of a reparations system which they did not create and over which they have little authority. Indeed, in only one State is the financial responsibility law (the foundation of the auto reparations system) regulated and administered by the insurance regulator. Of course, any governmentally mandated reparations system must look toward achieving an equitable balance between the interests of those who fund the system, those who are its current or potential beneficiaries, and those who operate it.

No purpose would be served here by dwelling upon the deficiencies of the fault system. As you know, we have made our judgment condemning that system, and we are at least as vigorous in urging its

replacement with a no-fault reparations plan as those who demand an instant Federal solution. As far as we are concerned the question is not whether there should be reform, or what that reform should be, but how it should be brought about and by whom.

Some urge immediate Federal enactment of a complete no-fault insurance program contending that reliance on State-by-State action would produce reform only after many years, if at all. We realize that some desirable reforms, for example, the model bill on consumer credit insurance, have proceeded slowly at the State level. On the other hand, it cannot be denied that Federal reform is not always accomplished overnight.

Uniquely in such situations, the Federal Government can exert considerable leverage to obtain compliance with its desires through direct admonition or even the most indirect intimation as to the possible consequences of non-compliance. For example, the simple manifestation of Federal concern over certain problems of insurance company stockholders led almost overnight to the universal adoption by the States of insider trading statutes and proxy regulations. Indeed, this was accomplished in less time, probably, than suitable legislation could have been fleshed out and passed by the Congress. We should remember that Federal implementation of no-fault auto insurance could not help but take a rather extended period of time.

The Administration's approach to auto insurance reform seeks to use the unique ability of the Federal Government, especially the Congress, to consider and then establish in broad policy terms the national will concerning an important national issue, leaving the detailed implementation of that policy to lesser levels of government. We propose that this be done by the adoption of a Concurrent Resolution urging reform along the principles outlined earlier.

The emphasis of our proposed Concurrent Resolution is directed toward the crying and immediate need for change in the reparations system. The emphasis of other proposals is frequently at least as much upon the Federal Government assuming the predominant role in the regulation of automobile insurance as it is upon the improvement of the compensation system. We believe that not only is such emphasis misplaced but that it would be counterproductive to the principal task at hand, i. e., prompt reform of the system to assure the more equitable and efficient reparation of auto accident victims. We believe strongly that realization of this paramount objective should not be delayed while we debate, at such length as the importance of the subject demands, whether automobile insurance, and the casualty and property lines to which it is inextricably tied, should be regulated at the State or Federal level or both. We believe that many in the Congress share our conviction that the reparations system demands reform immediately. Notwithstanding

this support for reform of the reparations system, we feel that a sound solution to the basic and vital issue could well become imperiled if it is linked with the exceedingly complex and divisive issue of State versus Federal regulation of insurance. The root problem to be eradicated is the inadequacy of the fault reparations system. We do not want to impede reform by creating two questions where only one need exist.

We are confident that by orienting the reparations system to first-party, no-fault insurance, the major problems which have plagued the States will be eliminated. These are, primarily, products of the fault system with its emphasis upon adversary proceedings and the defendability of the prospective insured. With no-fault auto insurance, the problem of underwriting individual vehicle owners will change as the system is changed. For example, we would expect the focus of underwriting inquiry to shift from concentration on the applicant's probable credibility as a defendant in a negligence case involving some unknowable plaintiff, (whose loss potential is also unknown) to concentration upon the range of loss potential presented by the risk of a known insured to be indemnified under the no-fault contract. The protective qualities of the insured's motor vehicle should also come to assume a very important role in rate determination, something that has not been possible in the past.

Perhaps of even greater importance, the smaller average loss potential of the young, the poor, the ghetto dweller, and the owners of

older or less valuable cars should make them more desirable risks with a consequent lowering of their premium rates. Those insured presenting the potential of greater wage loss, medical loss, or property damage loss (because of a more costly car) would pay relatively higher rates, and, of course, they would receive the greater protection which they need rather than having to rely upon some other driver having adequate insurance. Inasmuch as the higher loss potential tends to correlate with "ability to pay," a true no-fault system would tend to introduce a new element of fairness in the cost of insurance protection. In either event, the insurance applicant's safety and traffic violation record may be expected to bear heavily upon his acceptability as a risk and the premium rate which he must pay. In this connection, let me say that, contrary to some of the claims that have been made, we find nothing in a first-party reparations system which would militate against a safe-driver or merit-rating plan if this were found to be desirable. Indeed, to such extent that single car accidents are presently ignored under liability insurance merit rating plans, their inclusion under first-party plans might constitute an improvement.

We have stated our belief that most of our current automobile insurance problems spring from defects in the tort reparations system rather than from defects in the insurance institution itself and that conversion to a first-party, no-fault insurance reparation regime should cause the disappearance of many of those problems and difficulties. As

this happens, State insurance regulatory authorities will be free to deal with any remaining problems with the same tools which they have successfully used in dealing with the other first-party insurance problems.

Further, the necessary statutory and regulatory mechanisms already exist for coping with these issues and the States will not require a whole new body of law in order to convert to a first-party auto accident reparations system.

If we are correct that it is the tort reparations system which is deficient rather than the insurance mechanism, it seems unwise to seize from the States their regulatory authority just when no-fault reparations plans are being introduced. It would be highly unfair to the States to delay their no-fault plans while the Federal Government debates replacing their regulatory mechanisms with a new and unnecessary Federal apparatus. Reform of the reparations system should not be made to await the creation of such a Federal apparatus.

In this connection, other proposals often seem to address old problems, many of which will be eliminated or altered under a no-fault, first-party system. For example, under a first-party, no-fault system, a motorist's failure to insure would result in deprivation to him and his dependents, thus providing new incentives and making unnecessary the harsh penalties now required to enforce compliance with a compulsory liability insurance law. Also, if the protective attributes of the insured

automobile will largely determine the nature and extent of the insurance loss, the wisdom of the marketplace and the forces of competition should be at least as prompt in forcing adjustment in rating plans and underwriting techniques as would the proddings of a Federal bureaucracy. Moreover, under a no-fault reparations system, the regulator will be able to demand that rates and rating plans appropriately reflect the protective characteristics of the insured motor vehicle. Similarly, problems involving the unavailability of insurance and of policy cancellation or nonrenewal should significantly lessen under a no-fault system. In any event, we are confident that such problems as might exist would be different from those being encountered today under the tort liability insurance system.

Much of the difficulty we have with a no-fault accident reparations system imposed by the Federal Government uniformly on all the States is the lack of experience with such a system. At the present time, the Federal Government cannot mandate a reparations system which has been tried and tested on the State level.

In this connection, we should remember that changes in the reparations system, by themselves, cannot be expected to have any significant near-term influence on accident losses, only on their compensation. To slow and then reverse the death, injury and property damage toll of accidents, other actions will be needed, again by all levels of government, and we expect the National Highway Traffic Safety Administration to continue to lead the way.

In creating a single, mandatory reparations system, the Federal Government would be blindly preempting the field and foreclosing potentially valuable and instructive experimentation at the State level. Also, while the Federal Motor Vehicle Insurance Bill may go farther than some of the States would like to go, it may also not go as far as some others might wish. For example, in some proposals the tort remedy is partially preserved and to that extent its recognition by the States would be mandatory. This would bar a State which might wish to exclude the tort remedy entirely in favor of a complete first-party system from doing so.

I would add that even disinterested scholars have failed to achieve unanimity or even wide consensus as to the details of the ideal reparations system. For example, there has been much debate and there remains much division on the question of whether commercial vehicles should be separately classified and required to respond differently and more extensively in accidents involving pedestrians or other non-commercial motor vehicles. At least initially, States ought to be free to experiment in this regard and to adopt public policies consistent with their needs.

Whether deductibles should be permitted and, if so, their variety and range would seem better left to States' determination than to Federal fiat imposing a single, uniform rule. The Federal Government has a natural and proper interest in making certain that all automobile accident victims are reasonably compensated, but it has far less reason to demand

that those victims be compensated exactly, and only, in the manner which it prescribes.

It should be noted that under a contractual reparations system, each State would be in a far better position to control the quality and level of reparations for its citizens without respect to where the accident occurs than has ever been the case under the tort liability system. It has often developed under the present system that the substantive rights of the accident victim as regards compensation may be determined by the law of the place where the accident occurred. Since the right to compensation under a first-party reparations system is clearly contractual, the law and public policy of the State requiring it will set the basic standards for the victim's compensation whether a loss was incurred at home or in another State or nation.

In summary, we believe that the compelling case against the fault-liability insurance reparations system does not require the Federal Government to assume the sole, or even a principal, role in the economic regulation of the insurance business. We further submit that any belief that the Federal Government would, or could, regulate only automobile insurance to the exclusion of the other property and casualty insurance lines with which automobile insurance is so economically intertwined is not well founded.

We are convinced that the adequate, equitable and efficient reparation of auto accident victims is a pressing public policy issue. We are also convinced that the most logical route to solving this problem is through a no-fault automobile insurance system. We do not believe, however, that the Federal Government's assumption of the insurance regulatory function is essential to achieving this end, and reform of the compensation system should not be jeopardized by linking it with the Federal regulation of insurance.

Furthermore, we do not believe that much time would be lost while awaiting and evaluating the response of the States to such an expression of the will of the Congress. Even if the Congress were to enact a full-blown automobile accident reparation and insurance system this session, both justice and the rule of reason would demand deferral of its effective date long enough to enable the companies and the other affected parties to re-tool and gear themselves to the new system. Indeed, H. R. 4994 recognizes this need in the 18 month delay factor it provides between enactment and implementation. If, on the other hand, Congress were to manifest its will through the Concurrent Resolution we urge, all affected parties would have been put upon fair notice of its determination that reform must be effected one way or the other. If, contrary to our belief, the States were not to act responsively or in a timely fashion, the Congress would then be justified in foreshortening the effective implementation date of any subsequent Federal legislation which it later found to be essential.

WHERE DO WE GO FROM HERE?

The Department's study is now completed. You have our final report and our best judgment as to the kind of a reparations system which shows the most promise.

We hope the Congress, after listening to the views of the other interested parties, will see fit to enact the Concurrent Resolution we propose, setting forth the principles of the reparations system toward which the States should strive. These "principles" or "goals" would give guidance, direction and impetus to the States' own reform efforts. We have gone as far as we can without observation of actual experience. Now is the time for the States to act, and we will help them.

Both the Congress and the Executive should measure the States' progress toward these goals over a reasonable period of time. The Department of Transportation will maintain a program of continuing surveillance of the matter, and provide direct cooperation and assistance to the States. Two years from now, when we have had time to analyze the experience of the several States under new systems, there should be a reexamination of the whole question of auto accident compensation reform and whether or not some future action is desirable.

You have our draft Concurrent Resolution. If it is passed, we would look for the States to introduce no-fault reparations systems along the general lines we suggest. We would assist both the States and instrumentalities of the States in this effort. In addition to ensuring that the

ultimate development of the system is brought about by those who we believe can do it best, the States themselves, this approach would ensure the opportunity for full nationwide participation in such development.

Mr. Chairman, the problem of motor vehicle compensation is far more complex and far less easily resolved than many believe. But complexity, difficulty or whatever, should no longer stand in the way of action. We and the States should now be allowed to get on with the job.

This completes my prepared testimony, Mr. Chairman. We will be happy to answer any questions you or the other members may have.