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The Legal Nature of a Driver's License

Report of a discussion sponsored by the Committee on Motor Vehicle and Traffic Law, Chairman Louis R. Morony presiding, held at the 45th Annual Meeting of the Highway Research Board, January 17, 1966.

REMARKS OF DR. CHARLES B. NUTTING,
Administrator, National Law Center
The George Washington University

If I were to adopt a text for my remarks, I would like to think that an appropriate one would be: "Great oaks from little acorns grow." The topic of today's discussion actually resulted from a little talk I gave at a Highway Research Board meeting several years ago. At that time I indicated something that I think we all know, but seldom say, that, in most areas, research into highway law involves almost everything else you can think of. The highway itself is a great deal more than a strip of asphalt or concrete; it is a social institution. It involves not only the regulation of drivers and selection of those who are to use the highways, but nowadays a great deal of urban and regional planning is involved as we begin to build freeways into our great metropolitan areas.

Speaking specifically of the matter of drivers' licenses, however, I have the impression that this also involves a great deal more than statutes and administrative regulations. Like the highway, the automobile is also a social institution. It is part of our way of life. It presents not only those aspects which involve physical use

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of the highway, but it has important social and economic aspects, both to those who own and operate them and to other groups in the community.

So, when we study such things as drivers' licenses, I think it is necessary to get beyond the cliches of the "right-privilege" dichotomy -- which, after all, is no longer applicable in this field -- and get on the inside of the matter to consider the real social and economic implications of the deprivation or denial of a driver's license in modern life, not only to the driver but to his family, his employer, his associates, and the community generally.

That is why, in my capacity as head of the National Law Center, I was most happy when the Automotive Safety Foundation decided to provide a grant which has made it possible for Professor John Reese to spend a year in study and research at The George Washington University directed at the problems of driver licensing. We on the faculty of the law school are extremely pleased with the way Professor Reese has done this work, and with the results he has achieved. And we are pleased that, with the continued support of the Automotive Safety Foundation, he is going on at the present time to look further into the administrative process through which driver licensing is carried on.

It is therefore a very keen personal pleasure to present my colleague, John Reese, who has a paper based on his recent research, after which we are to have the benefit of comments by our discussants: Professor Charles Bowman, Mr. Joseph Hennessee and Mr. Robert Donigan.

REMARKS OF PROFESSOR JOHN H. REESE,
Texas Technological College

I would like to begin where Dr. Nutting left off, and stress his characterization of the highway and the automobile as social institutions. Cars, highways and drivers have been referred to throughout the literature of the highway safety problem, and have been described as the three factors which were the basis of any comprehensive view of safety. Typically, however, when legal research has been directed toward the safety problem, it has tended to isolate one or another of these elements from the others, or concentrate on it to the practical exclusion of the others, acknowledging the possibility of interplay with other factors but never defining this interplay.

Though I believe strongly that all three factors must be understood as they react together, I confess to having fallen into this common tendency and given most of my attention to the driver. But I have tried to indicate points of interrelationship, and their importance. I think that, to the degree it is possible, we should try to view these factors together as they operate in driver licensing. Too much isolation runs the risk of introducing a certain bias into our research.

Also, I think one must take a broad view in order to get at the real nature of a driver's license. Americans have a philosophy about driving cars, and in the description of this philosophy we cannot stop after looking at the statutes, rules, court decisions, and the like. These reflect only a part of our philosophy. We must look beyond these sources to see what roots these decisions have in the lives of the people who make up the community. We must try to think in terms of the social interests that are served by having people drive cars, and by denying people a license to drive. Obviously our thinking on this point has changed much since, say, 1900. The social impact of the automobile today is a far cry from what it was then. It is a far more important force in today's life than it was in the life of 1900, and a far more complex influence. To be realistic, motor vehicle law, like all other kinds of law, must accurately reflect the goals, standards and conditions of the community in which it is to be applied.

Influencing our philosophy of driver licensing as it has developed in the United States, there are two fundamental views of the law's function. One view is based on the 19th century writings of John Austin, who articulated a theory that law took the form of rules developed by deductive reasoning, and formed a complete and comprehensive system of regulation. In such a system the principle of stare decises could operate easily and with propriety because the legal system had a symmetry and consistency resulting from its logical origin. In this view of law, sanctions become extremely important. People are told what they must do, and if they fail they will be punished. A cursory reference to the codes of any state will reveal how strong the influence of the Austinian approach has been and still continues to be in American law.

At the other end of the spectrum is the sociological approach, most recent champion of which has been Dean Roscoe Pound. Essentially Pound has said that the law reflects the social interests and mores of the community which it serves including all the inconsistencies and illogical features of social behavior. It recognizes that the basis of the social system is people, and the law must be skillfully designed to control people's behavior.

These are two varying views of the law and its function. In the field of motor vehicle and traffic law, I believe there has been a dangerous tendency to try to maintain rules and formal standards long after the original conditions which they served ceased to exist. Laws which were suitable in the so-called "good old days" do not continue to make sense after their original bases for existence disappear. This idea is a fundamental part of the thesis which I have developed.

As I have viewed the problem of defining the nature and role of a driver's license the concept of mobility in modern American society is a key factor. Today, to most Americans, this represents one of their freedoms or liberties. It has ancient roots in our tradition. As early as Magna Carta we find the statement that

> "in the future it shall be lawful except for a short period in time of war for the common benefit of the realm for anyone to leave and return to our kingdom safely and securely by land and water, saving his fealty to us. Excepted are those who have been in prison or outlawed according to the law of the land, people of a country at war with us, and merchants who shall be dealt with as aforesaid."

Building on this tradition, Blackstone, several centuries later said:

> "Next to personal security, the law of England regards, asserts, and preserves personal liberty of the individual. This personal liberty consists of the power of locomotion, of changing situations, or moving one's person from whatsoever place one's own inclinations may direct without imprisonment or restraint, unless by due course of law."1/

Thus was established in the English common law the notion that an individual's freedom which is protected by the law extends to one's movement from place to place. This outlook was part of the philosophy of the Englishmen who settled North America about the time of Blackstone. It was also expressed in the Declaration of Independence, by the notion of inalienable rights. It was also expressed in the Bills of Rights adopted by the states following the Revolution. These Bills of Rights were in reality codifications of the common law rights which the people had enjoyed as Englishmen under English common law. It included the notion of freedom of movement.

1/ 1 Blackstone, Commentaries, 134

The Supreme Court of the United States has confirmed that liberty includes the freedom of movement by its construction of the Bill of Rights in the federal constitution. In 1868 and 1873 the 14th Amendment was construed to this effect in Crandall v. Nevada 2/ and the Slaughter House cases.3/ Then, at the turn of the century, in William v. Fears, the Supreme Court declared:

> "Undoubtedly the right of locomotion, the right to move from one place to another according to inclination is an attribute of personal liberty, and the right ordinarily of free transit from or through the territory of a state is a right secured by the 14th Amendment and by other provisions of the Constitution."4/

In 1920, the Court also had occasion to speak to this same point:

> "From the beginning, down to the adoption of the Articles of Confederation, citizens possessed the fundamental right to dwell within the limits of their respective states, to move at will from place to place therein, and to have free ingress thereto and egress therefrom."5/

Probably the most recent important pronouncement of the court on this point occurred in 1958 in Kent v. Dulles, in which the question arose out of denial of a passport to an applicant. Here the court said:

> "The right to travel is a part of the liberty of which a citizen cannot be deprived without due process of law under the 5th Amendment. So much is conceded by the Attorney General .....Freedom of movement is basic in our scheme of values. Freedom of movement also has large social values. Freedom to travel is indeed an important aspect of the citizen's liberty. As we have seen the right to exit is a personal right within the word 'liberty' as used in the 15th Amendment. Where activities and enjoyment often necessary to the wellbeing of an American citizen such as travel are involved, we will construe narrowly all delegated powers that curtail or dilute them. To repeat, we deal here with a constitutional right of the citizen."6/

2/ 73 U.S. (6 Wall.) 35 (1868).
3/ 83 U.S. (16 Wall.) 36 (1873).
4/ 179 U.S. 270 (1900) at 274.
5/ United States v. Wheeler, 254 U.S. 281 (1920) at 293.
6/ 357 U.S. 116 (1958) at 125.

Other cases could be mentioned in the field of freedom of assembly or freedom of association, all tending to support this notion that through the 5th Amendment the Federal Government cannot deprive one of the liberty of mobility without due process of law, and that through the 14th Amendment the states are subject to the same limitation.

So, a review of the interpretation of the 5th and 14th Amendments shows that in the United States there is a constitutionally protected liberty of mobility. This is a Federally guaranteed right, and the significance of this will appear more clearly when one considers the relationship of these two bodies of doctrine in the application of the concept of due process to administrative decisions.

How is this liberty of movement expressed? One means, obviously, is associated with the physical structure of the highway itself. The Uniform Vehicle Code describes the highway in this sense -- "the entire width between the boundary lines of every way publicly maintained, when any part thereof is open to the public for purposes of vehicular travel." This definition does not, however, indicate the significance of the highway as a legal right-of-way, established by and for the public, to facilitate the movement of people and goods. This is the social (as opposed to physical) definition of the highway. It is a legal device for implementing the concept of physical mobility which the community ranks high on its scale of values.

In this socio-legal concept of the highway, the states have no legal power to build "non-public" highways, or highways to which this public right of free movement is not guaranteed. Thus, the highways which our states have built are established as public ways, open to all, freely and in accordance with this concept of the public's right of mobility.

This does not mean, of course, that the public's right is absolute, and not subject to any regulation. None of our constitutional freedoms are absolute in this sense. But because this freedom may be regulated, it does not necessarily follow that it is any less fundamental -- that it is a mere privilege granted by a benevolent legislature, subject to being taken away at the option of the legislature or an administrative agency under delegated authority.

Which premise shall be followed, therefore, in dealing with this freedom in the context of driver licensing law? Is it correct to start by saying that the public has no legally protected interest in the use of its highways, and receives only the privilege of use that a benevolent legislature grants through the determinations of its state motor vehicle department? Or, should we begin with the premise

that the public has a legally protected interest in the use of the highways for purposes of movement and travel, subject to reasonable regulation by the state insofar as such regulation furthers the general public interest in such use? I believe the latter approach is not only correct in terms of our legal tradition, but is more realistic in terms of our American scale of values.

This view is supported by a number of supreme court decisions. I will mention only one -- Packard v. Banton, decided in 1924. This case involved a person who was required to post financial security following involvement in an accident as a condition to being allowed to continue operating his taxicab. The court said here

> "if the state determines that the use of streets for private purposes in the usual and ordinary manner shall be preferred over their use by common carriers for hire, there is nothing in the 14th Amendment to prevent it. The streets belong to the public, and are primarily for the use of the public in the ordinary way. Their use for the purpose of gain is special and extraordinary, and generally at least may be prohibited or conditioned as the legislature may deem proper....
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> Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right, and one carried on by government suffrance or permission. In the latter case, the power to exclude altogether generally includes the lesser power to condition, and may justify a degree of regulation not admissible in the former."7/

In other words, where highways are used for the purpose of gain much more leeway is given to the state to regulate their use. But, when one speaks of the use of a highway for purposes of movement or travel, one is speaking of a use of the highway as a matter of right rather than a matter of governmental suffrance or permission.

Summarizing the supreme court's decisions in this field, Stephenson v. Binford, decided in 1932, said:

> "First, it is well established law that the highways of the state are public property; that their primary and preferred use is for private purposes; and that their use for purposes of gain is special and extraordinary which, generally at least, the legislature may prohibit or condition as it sees fit."8/

7/ 264 U.S. 140 (1924) at 144-145.
8/ 287 U.S. 251 (1932) at 264.

And, a California decision has said:

> "The streets of a city belong to the people of the state, and the use thereof is an inalienable right of every citizen, subject to legislative control or such reasonable regulation as to the traffic thereon, or the manner of using them as the legislature may deem wise or proper to adopt and impose. Highways are for the use of the travelling public, and all have the right to use them in a reasonable and proper manner and subject to proper regulation as to the manner of use."9/

Thus we have liberty of mobility and the right of highway use as an expression of that mobility. Next one may appropriately turn to the mode by which this liberty is expressed or realized. A person may, of course, use the highway as a pedestrian. He may be carried by an animal, or drawn in a carriage; or, more customary today, he may move by driving a motor vehicle. In dealing with the right of movement on the highway, the common law adapted itself to the various modes of movement which a changing industrial technology developed. For example, an 1876 court decision touched this problem when it stated:

> "When the highway is not restricted in its dedication to some particular mode of use, it is open to all suitable methods. It cannot be assumed that these will be the same from age to age, or that new means of making the way useful must be excluded merely because their introduction may tend to the inconvenience or injury of those who continue to use the road after the same manner as formerly. A highway established for the general benefit of passage and traffic must admit of new modes of use whenever it is found that the general benefit requires it."10/

And, another case rather colorfully has said:

> "A highway's intended for public use and a person riding a horse has no right superior to a person riding a bicycle, and they cannot be banished merely because they were not ancient vehicles and used in the Garden of Eden by Adam and Eve. Because the plaintiff chose to drive a horse and carriage does not give him the right to dictate to others their mode of conveyance upon a public highway."11/

9/ Escobedo v. State Department of Motor Vehicles, 222 P. 2d 1 (1950) at 5.

10/ Macomber v. Nichols, 34 Mich. 212 (1876).

11/ Thompson v. Dodge, 60 N.W. 546 (Minn. 1894).

This was the approach adopted by the common law. It does not preclude legislatures from modifying these rules and legal principles, although to date no state legislature has imposed general prohibitions or conditions on modes of movement on the public highway. There have been episodes in the early days of automobiling when motorists were obliged to sound warnings in advance of their coming down a road, or have a pedestrian flagman walk ahead of the car to prevent horses from taking fright. These efforts to discourage the introduction of motor vehicles on horse and buggy highways reflected the outlook of a society which is a far cry from the present one. The orientation of our present highway and traffic laws clearly reflects the prevailing social and economic value that today is placed on the widest possible use of motor vehicles.

Along with this acceptance of motor vehicles as the predominant mode of movement, it has been necessary to accept a measure of control over their use. The mechanism for this control grows out of the federal system of our government. The states, as semi-sovereign elements of our constitutional system, are endowed with the police power, and the problem which is at the heart of our successful reconciliation of the need for mobility and the need for control is seen in this interplay between the states' power and the federal constitution's limitations on the states. The successful reconciliation of which I speak must be worked out through the operation of the Due Process Clause of the 14th Amendment. This provision has both procedural and substantive aspects. It applies both to the manner in which the state exercises its police power, and to the objectives of control or the terms of regulation which are imposed on liberty.

Numbers of supreme court cases have pointed out that the Due Process Clause in the Constitution does not embody a static concept. Justice Frankfurter, in 1948, stated the court's view of this concept as follows:

> "Due process of law thus conveys neither formal nor fixed nor narrow requirements. It is the compendious expression for all those rights which the courts must enforce because they are basic to our free society. But basic rights do not become petrified as of any one time, even though, as a matter of human experience some may not too rhetorically be called eternal verities. It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing as it does a living principle, due process is not confined within a permanent catalogue of what may at a given time be deemed the limits or the essentials of fundamental rights."12/

12/ Wolf v. Colorado, 338 U.S. 25 (1948) at 27.

Hence, due process cannot be isolated from the times. The due process of 1900 is not the due process of 1966. A police regulation, although valid when made, may by reason of later events become arbitrary and confiscatory in operation. Or, a regulation which is valid as to one set of facts, may be invalid as applied to another.

In applying the police power to the control of motor vehicle use, I submit we must emphasize the positive rather than the negative aspects of this power. Using this outlook, the state denies motorists the right to park along certain street curbs; it does not grant them the right to park at certain times or in certain places. There is nothing in this view of the law, or the constitutional due process clause that need give the states any fear of being rendered powerless. Ample room for reasonable and realistic regulation is preserved.

With respect to the driver and his license, the state courts of this country as early as the 1840s laid down the principle that certain types of street uses could lawfully be controlled by licenses. These early cases dealt with steam omnibuses, which under some circumstances might be regarded as nuisances because of their frightening effect on horses and farm animals. The manifest dangers of vehicular travel at high speeds were other contributing factors in other early license cases. The court decision which, more than any other, seems to have provided the means to move from this view to that of holding that motor vehicle operation was a privilege was, however, People v. Rosenheimer decided by the New York court in 1913.

People v. Rosenheimer arose out of a failure to stop and render aid following an accident. In discussing the status of the driver so charged the court said:

> "There is one ground upon which, in my opinion, the validity of the statute can be safely placed. The legislature might prohibit altogether the use of motor vehicles upon the highways and streets of this state. It has been so held in State v. Mayo...and Commonwealth v. Kingsbury...."13/

In fact, however, these latter cases did not so hold, at least in the sense that they contemplated legislative authority to prohibit all motor vehicle use from all state roads or streets. At most they held that under certain circumstances, selected streets and highways could be barred to motorists. But the New York court read into these decisions the wider implication that became the basis for asserting a

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13/ 102 N.E. 530 (1913).

general power over the motorist's liberty of movement. This was emphasized by the court's statement that:

> "Doubtless the legislature could not prevent citizens from using the highways in the ordinary manner....But the right to use the highway by any person must be exercised in a mode consistent with the equal rights of others on the highways....The fatalities caused by them are so numerous as to permit the Legislature, if it deemed it wise, to wholly forbid their use ....Of course, the whole of this argument rests on the proposition that in operating a motor vehicle the operator exercises a privilege which might be denied him, and not a right, and that in a case of a privilege the Legislature may prescribe on what conditions it shall be exercised."14/

Essentially, then, we have here an extension of the earlier cases which held that states may regulate the use of automobiles under the police power, and if necessary the police power permits excluding them from selected streets or roads. Ironically, these earlier propositions are valid even in today's context, yet their extension to the principle which the Rosenheimer case announced is curiously at odds with the whole point of 100 years of constitutional law, and with the standard of values which prevails at the present time. Turning the matter around, it might be asked whether the court in 1913 could have said that driving horses and carriages required a license on the same theory, or whether any court in 1966 would impose a licensing requirement on drivers of horsedrawn vehicles? Could the driver of a horse and wagon today support a claim to go where he pleased on the highway by quoting the Rosenheimer case, with its premise that the wagon driver has a preferred position on the highway because he antedated the automobile?

The Rosenheimer case has been prolific in its progeny of decisions in which the privilege concept has been applied to driver licensing. But some courts have not been entirely at ease with it. In 1958, the Rhode Island Supreme Court said:

> "We have come to the conclusion that we can no longer subscribe to the proposition for which the LaPlante case stands. The use of the automobile as a necessary adjunct to the earning of a livelihood in modern life requires us in the interest of realism to conclude that the right to use an automobile on the public highways partakes of the nature of a liberty within the meaning of the constitutional guarantees of which the citizen may not be deprived except by due process of law."15/

14/ Ibid. at 532.
15/ Berberian v. Lussier, 139 A. 2d 869 (1958) at 872.

Clearly, it seems, the court here was recognizing the difference between the horsedrawn society of 1913 and the automotive society of the present generation.

The pertinent question for the present, therefore, is not whether driving a motor vehicle is a right or a privilege, but whether driving an automobile is a sufficiently valuable individual interest to require the state's control measures to be consistent with due process of law. I am convinced that the efforts to continue viewing motor vehicle use in terms of the right-privilege dichotomy will not yield results that will ease the motor vehicle administrator's task under the law, or make his administrative decisions more understandable or acceptable to the public. For the future, the only sound basis on which to base control of motor vehicle use is the social and economic interest which this activity represents to us.

I suggest, also, that in dealing with motor vehicle use, our control of the driver should take account of the fact that his activities vary with the circumstances in which he lives and works. Currently, 54 per cent of all motor vehicles are licensed and used in the great metropolitan areas of ten states. The type of driving these people do differs markedly from the type of driving that is characteristic in our rural and open space areas. In the urbanized centers of our American society, slightly more than 75 per cent of vehicle use is for employment or family business. Purely pleasure driving is a minor phenomenon. This is a factor which will strongly influence the type and degree of control that will be accepted by the public. This is bound to be reflected in the courts' future construction of the due process clause, and it should be reflected in prudent legislation and administration.

REMARKS OF JOSEPH P. HENNESSEE,
Counsel,
American Association of Motor Vehicle Administrators

The first thought that I have regarding the subject that Professor Reese has discussed is the old saying that "The mills of the gods grind slowly, but they grind exceedingly fine." I think this is an area where we must apply this approach. I know that in discussing the nature of a driver's license, or the right to use the highways, the academic mills started grinding as early as 1951, with the publication of a very fine treatise by Paul Johnston, in the North Carolina Law Review. 16/ To my knowledge this is the first serious attempt to consider the nature of a license to drive, and it has had a very strong

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16/ Johnston, P., "The Administrative Hearing for the Suspension of a Driver's License", 30 N. Car. L. Rev. 27 (1951).

effect on my own thinking about this subject. I believe it also has had a strong effect on Professor Reese. Much could be said about it, but I think for our present purpose it is sufficient for me to say that Paul Johnston was a little bit aghast at the idea that there is anything in our system of law and government which one could denote as a mere privilege.

In 1957 the mills ground a bit further in this matter and produced the view that all systems of license suspensions are governed by general principles of constitutional law and statutory construction. There seems to have grown up an idea that there is something special here, and that special rules apply. But, nothing else appearing, the same general principles of constitutional law and administrative law apply to driver licensing as in other areas.

One of the quotations from a case that Professor Reese cited deserves special notice. In the Berberian case, the Rhode Island Supreme Court said:

> "Whatever may be its nature, the use of the public highways for travel by motor vehicles is one which can properly be regulated by the legislature in the valid exercise of the police powers of the state."17/

Professor Reese has attempted to point out in this regard -- and this deserves emphasis -- that it no longer admits of question that there can be regulation, but we do not always recognize that it is the legislature that can regulate. Under our system of government, this authority to regulate, except in very limited delegations, resides in the legislature and not in our administrative bodies.

The theme which runs throughout Professor Reese's treatise -- and it is a very fine treatise -- is that due process of law is the key to successful reconciliation of the competing pressures of liberty and regulation. This is not a new concept. It goes back at least as far as the year 1215, when the barons forced certain concessions from a reluctant king of England. It is not a new subversive doctrine invented by the Supreme Court, as some of that court's critics may assert. Due process of law was put into our system for a protection of the rights of the individual, and there is nothing wrong with using this built-in protection as it was intended. I am in complete agreement with Professor Reese that there is a time when one has to balance the general interest of society against the rights of the individual,

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17/ Supra, n. 15.

and his conclusion that the due process clause is the fulcrum upon which we make this balance is essentially sound.

I have often thought that the concept of privilege, as it has been used in driver licensing resulted from at least two basic errors of reasoning. The first error was to assume that if the license to drive and to use the highways to drive motor vehicles was a "right", it was not subject to any regulation. The second error was to mix up the meanings of the terms "right" and "privilege".

Two illustrations may indicate more precisely what I mean. All of us would agree that we have the right -- subject to reasonable regulation -- to use the public highways. This right, however, does not include any usage of the highway which we might personally choose to make. For example, I have a right to drive my motor vehicle on the highway without getting special permission, but I do not have this same right if I want to move a house down the highway. Permission can be granted me to move a house along the highway, but this permission gives me a privilege to make this use of the highway.

The other illustration I would offer is that we are all subject to the speed limits which are prescribed for highway use. This is to say that each of us has a right to drive our vehicle on the highway up to the speed limit prescribed; we do not have a right to exceed these speed limits. Exceptions to this rule are provided for certain obvious situations. Police and emergency vehicles are permitted to exceed these limits, but they do it as a matter of privilege.

Overall, I think that Professor Reese has done a great service by opening up the problems of driver licensing to the point where we are encouraged to examine the practical effects of regulation. His point that law has to be reasonable and reflect the current needs of society is a valid conclusion which should be more widely recognized in the practice of lawmaking and law enforcement.

But I am not sure that I concur with his final conclusion that -- and these are his words -- "the time-worn right-privilege approach should be abandoned as essentially meaningless for adequate analysis of problems involving motor vehicle operation." I think we are going to have to continue to use this time-worn right-privilege approach until the mills have ground a little bit further, and there is more unanimity for the view that driving on the highways is something more than a privilege. I do agree thoroughly with his concept that whatever we may decide to call a driver's license, it should not be denied or taken from its holder except by due process of law. It need not frighten those who are responsible for safety on the highways, for it is simply a concept of fairness which comes down through our evolving system of law from the earliest times. It is simply the belief

that all of us have certain rights and responsibilities, and that the holder of a right must accept his corresponding responsibilities. Where a question arises as to whether these responsibilities are being met, all that due process requires is that an individual be dealt with fairly when he is called to account.

In Professor Reese's treatise, he quotes the AAMVA Manual on Driver Improvement, which follows closely the privilege concept of licensing, and says that

> "licensing is the granting of a privilege. If driving were not merely a privilege but a legal right licensing would be unnecessary. In fact it would be impossible."18/

I am happy to state that in a new edition of this manual, dated this year, you will find that this statement has been changed. The new manual recognizes that the use of the highways is something more than a privilege which a bountiful sovereign may grant or take away at his pleasure. There is a recognition that the legislature has authority to regulate this activity consistent with the limits of constitutional doctrine.

I am grateful to Professor Reese for his contribution to what we know about driver licensing, and whether his thesis is popular with the traditional thinking that has prevailed or not, it cannot be ignored.

REMARKS OF ROBERT L. DONIGAN,
General Counsel
Northwestern University Traffic Institute

After having previewed Professor Reese's thesis and listened to his discussion today, I think he should be commended for the masterful job of historical and legal research he has accomplished pertaining to the subject matter of this session.

In review, his paper emphasizes our constitutional freedom of movement in this country; it points out the fact that our roads and highways are built and maintained as physical ways of passage -- a means by which this freedom of movement can be enjoyed by the general public and particularly, by each one of us as an individual; it reviews the old common law rule that all modes of locomotion had equal rights to the use of these ways of passage; it adequately supports

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18/ AAMVA, Driver Improvement Through Licensing Procedures, (1956) p. 18.

the principle that under their police powers, the states, yes, and even the federal government, have the authority to regulate and control the movement of traffic upon these ways of passage by proper legislation and its enforcement within the limitations of constitutional provisions pertaining to the due process of law; and then concludes with a discussion about operators of motor vehicles and the relationship of their official permits to operate their vehicles on these public ways of passage.

It appears to me that all of this leads up to but one objective on the part of Professor Reese -- to point out that to designate official permission to operate a motor vehicle upon our highways a "privilege" is not only an outmoded doctrine, but leads to disrespect of the law, and that "it would appear to be the better view that the public has a legally protected 'right' to use its highways for purposes of movement and travel, subject to proper state regulation of that 'right'."

It always has seemed to me that the argument of whether official permission to drive motor vehicles upon our roads should be termed "a privilege", "a freedom", "a liberty", or "a right" is merely an unimportant play upon words. Research of the court decisions or case law on the subject during the more than 18 years I have been connected with the Traffic Institute of Northwestern University has indicated that during that time the courts have been practically unanimous, no matter what they call this official permission, in declaring that it is something that cannot be arbitrarily and capriciously denied an individual, nor can it thus be taken away from him. I don't believe that any of the many state supreme courts which still adhere to the doctrine that it is "a privilege" would quarrel with the professor's premise (and, incidentally, mine also) that such permission is of such a nature as to properly come within the scope of the protection of the due process clause.

I don't believe that anyone interested in traffic safety "fears" the courts' calling this permission to use the highways "a right". As Professor Reese has indicated, such courts continue to hold that it is not absolute and is subject to reasonable regulation and control by the state, even as when they called it "a privilege". And certainly there is none of us who has studied the law in this area who does not agree with the professor's statement that "a license to operate a motor vehicle is of tremendous value to the individual and may not be taken away except by due process."

But, as an individual, I say it is time we stop placing so much importance upon words. There are many of us in this field of traffic safety who must stop being so excited each time we hear that some state supreme court has departed from the "privilege" concept and adopted the rule that use of our highways should be called a "freedom", "liberty", or "right". As Professor Reese has pointed out, whatever it may be called it is not "absolute" and can be properly controlled.

Our efforts and energies will be much better spent in "doing" -- doing those things which all of us know should be done. There is no question that the granting and taking away of official permission to use our highways must be properly controlled and this should be our primary concern. What this permission may be called in a particular jurisdiction is no obstacle in accomplishing this objective. When I look at the statistics and find that more than 50 percent of our nation's population is licensed to operate motor vehicles, the question pops up in my mind: "How were they licensed?", particularly when one considers that more than 80 percent of the bloodshed on our highways is caused by their actions, that traffic fatalities alone total each year more than five times the number of deaths caused by the gun, the stilletto, poison, and other criminal means.

Here I stand before you with a lawfully issued permit from my home state to operate a motor vehicle. For more than 45 years I have been authorized to drive and have driven motor vehicles all over this nation of ours. However, I have never been required to take a driver's examination or test. How many thousands of other licensed drivers are there like this? I have a friend who is 86 years of age whose wife refuses to ride with him anymore but he still drives and retains his license. Moreover, he has not been requested to take a driving test in the last 20 years. How many of us have heard of instances where motorists are drawing assistance money for the blind but still have licenses to and do drive motor vehicles? And on and on. When one asks the question: "Why?", he usually meets with the answer that the motor vehicle administrator does not have the funds or facilities to catch up with every person who should not be driving. When one considers that more than half our national population is behind the wheel, the sheer number lends credence to this.

Isn't it about time that we as a nation, with the annual toll of traffic fatalities rapidly approaching the 50,000 mark and above, and the number of personal injuries reaching 2,000,000, recognize that the operator of a motor vehicle now should be put on the same plane as the locomotive engineer and the commercial air line pilot with respect to requirements concerning physical condition and skill?

I don't agree with Professor Reese's implications that just because a person has fair physical health, or physical deficiencies that are not too bad, because he can or has acquired some ability to operate a motor vehicle, and because he has an occupation requiring use of a motor vehicle on the job, or going to and from it, he thereby is entitled to a constitutional freedom of movement by the particular means of his operating a motor vehicle. We don't hire a locomotive engineer just because he wants the job. We now should set our standards for physical condition and skill for the operators of motor vehicles on a comparably high level, regardless of their desires, needs, jobs, or occupations. If they cannot meet these high standards of physical condition and skill, let them obtain other means of transportation for their pleasure or their jobs, or obtain different types of employment, just as the unsuccessful applicant for an airplane pilot's job must do.

But in order to set our sights this high, we must insist upon competent motor vehicle administrators in each of our states with sufficient and competent personnel to operate a proper program of driver licensing, of continuous checking of licensed drivers, of driver improvement facilities, and of procedures in suspending and revoking licenses. This requires much more money and better and greater facilities for each administrator than is available in any state today. This also means education of the public and just as importantly, if not more so, education of our legislators on this whole problem. Surely some of the billions of dollars that our traffic accidents are costing us each year can be better spent for these well worthwhile purposes.

Research on the part of physicians, psychologists, psychiatrists, trained and skilled motor vehicle operators, administrators, and others is needed to determine what proper standards should be required in the way of physical condition, mental condition, driving ability, and attitudes of the applicant for official permission to use our highways. The results and conclusions should then be reflected in the tests and examinations of each applicant on a uniform basis in each state. What good does it do us to have a high level in one state and low levels in others, as this situation exists in some jurisdictions today?

We also need research in the field of driver improvement as it applies to the motor vehicle administrators' programs. What should such a program consist of? What types of persons should administer it? What should be the qualifications for such persons? How should the program be conducted and administered? Answers to these questions and numerous others in this area should be determined by such research. Again, the conclusions of such research should be implemented on a uniform basis in every jurisdiction.

Only when applicants for this official permission to use our highways are required to meet the proper standards of physical and mental condition, ability, and attitudes as trustees of human lives upon our highways; when the administrator is enabled to keep a close check on licensed drivers through well-maintained records of their failings and transgressions, if any, and through compulsory and frequent periodical reexamination and testing regardless of age of the driver; when the administrator is enabled by competent and sufficient personnel and adequate facilities to maintain a proper driver improvement program; and when he also is provided with competent and sufficient personnel and adequate facilities to conduct proper investigations and hearings relating to suspensions and revocations will many of our problems concerning drivers be eliminated or improved.

These controls can be properly established within the limits of our constitutional protection of due process no matter whether the use of our highways is held to be a privilege, a freedom, a liberty, or a right.

REMARKS OF PROFESSOR CHARLES BOWMAN
University of Illinois

Like most pieces of good research, Professor Reese's paper raises as many questions as it answers, and it is to some of these unanswered questions that I would like to address my comments.

Labeling is always unsatisfactory, as Mr. Donigan has pointed out. What, for example, do we mean when we say that something is a "privilege" or a "right"? These words have common connotations, but probably there is no single meaning that everyone would accept. We know that the privilege concept originated in England in the early days when all of the highways belonged to the crown, and it was only by privilege that the common man was permitted to use the king's highway. This idea has continued with us in various forms.

We also have under our constitution certain inalienable rights of life, liberty, and the pursuit of happiness. We have the right of free speech; but we do not mean by this that one has a right to shout "Fire!" in a crowded theater. We have the right to religious worship as we please; but we may not use this reason to defend the practice of polygamy. We have the right of free assembly; but this does not mean we can interfere with the rights of others in using the streets, sidewalks or other public places. We say one has a right to practice law, or any other profession, if he chooses to do so; but we know that permission to practice a profession is usually conditioned by law on meeting and maintaining certain qualifications as to education, character, fitness, and the like.

If we say that one has a "right" to practice medicine, for example, then it surely is a right which has very definite qualifications attached to it. Consistent with this view, the "right" to operate a motor vehicle can be made subject to certain qualifications and regulations. Because motorists are subject to these regulations and qualifications, it has been easy to fall into the habit of calling it a "privilege." We say that driving is a privilege because the state can deny one the right to drive. It regularly does so with respect to people under the minimum age limit, although when I was a boy, and first drove a car at the age of 11, there was no minimum age limit for licensing drivers. Does this mean that the driver's license is a "privilege" which is granted to a person when he reaches a certain age? I do not believe it makes much difference what we call it, and in this respect I wish to associate myself with the remarks of Mr. Donigan. I cannot believe it makes much difference in the way that the courts or administrative agencies deal with drivers' licenses.

I would like to point out one thing which I think causes difficulty, and perhaps it is an area in which further research can be undertaken with benefit. I think we need to spend a good deal more time analyzing and evaluating what actually can be done under the police power of the state within the framework of the due process concept. Here, in these two concepts, we have different areas in which we may operate and which will have a substantial bearing on handling drivers and driver licensing on the highway.

I would like to read just one quote from Professor Reese's paper, and offer a comment. He says:

> "If, however, the court determines that liberty of mobility and the state's exercise of the police power have collided, usually because of some state statute or administrative regulation, it must then proceed to the business of determining whether the private right should be preferred, thereby forcing state authority to yield. In both instances, but particularly in the circumstance where a conflict appears to be present, the court must have available some criterion, some concept, to aid it in making its decision. That criterion is the due process clause of the 14th Amendment."

I do not believe I can agree with him on this proposition that the 14th Amendment due process doctrine provides the best, or the only, criterion which the courts can use for determining whether or not a particular statute is valid. We have in this country, as has been mentioned in Professor Reese's paper, two competing concepts: one is due process of law; the other is the police power of the state. Due process primarily is applied in the criminal law field, although not

exclusively as we all know. But the minute we get into the criminal law field, and denominate a statute which includes certain criminal sanctions, we are then in the criminal law field, and we test that against due process of law standards in the 14th Amendment.

Where does this lead us in handling traffic cases? Certainly within the past ten years in the criminal law field the supreme court has not given us too much help. If we use the due process standards of the 14th Amendment as the criterion for the courts, what are we really giving them? When one looks deeply at the sum total of the court's doctrine, it seems to say that due process merely means fundamental fairness.

On the other hand, the police power of the state is a concept that has long been known in this country. It extends throughout the whole area of social control -- not exclusively to the criminal law. If we test motor vehicle and traffic statutes by the police power of the state, which is merely one of reasonableness rather than arbitrariness, we may perhaps have more leeway in regulating this activity which expresses our right of mobility. Certainly, I submit, we have more leeway than if we attempt to test it by the due process standard or fundamental fairness concept which the courts have given us in this area of doctrine.

Paul Johnston's paper, which Mr. Hennessee mentioned, was an important landmark of thinking about this process of licensing and license administration. It has far-reaching implications which to date have not been appreciated. One of these was his suggestion that regulations for traffic on the highway be taken out of the criminal law codes, and made non-criminal. In this form, they could be handled by administrative tribunals and administrative procedure, thus avoiding the necessity of performing the full ceremony of a judicial trial as required by the procedural due process doctrine of the 14th Amendment. North Carolina recently completed a study of their traffic law enforcement system, and concluded that it would be possible under the state constitution to shift to a system such as Johnston recommended. New York has done this since 1929, but they still handle them through their courts. And, of course, as long as you do this, you are still in the due process area.

What I am suggesting is that perhaps further research should be done regarding the handling of these under the police power of the state rather than under due process concepts, because due process has acquired a connotation that I think is much more restrictive than it perhaps should be. Police power, however, is something which, although

never accurately and entirely defined, is generally understood, and we know in working terms what a "reasonable" regulation is.

With this one difference of opinion with Professor Reese, I will express my congratulations to him for an excellent piece of research, and my hope that he will continue his work.

GENERAL DISCUSSION

MR. MARSH: I would like to make three comments about Mr. Donigan's remarks.

First, I would like to challenge very strongly his statement that more than 80 per cent of the traffic fatalities are "caused" by drivers. This is erroneous as he made the statement, although I am sure no one here would quarrel with him if he had said some very high percentage of accidents "involved" driver actions, or something of that sort.

Second, he referred to hiring locomotive engineers and airline pilots, and suggested that this was comparable to licensing automobile drivers. I think this is not a completely parallel situation, but I heartily agree with the conclusions he reached -- namely, it is of the greatest importance that we have tremendous improvement in our driver licensing.

The third point arises out of Mr. Donigan's emphasis on the need for a high quality of competence in our motor vehicle administrators. I am in complete agreement. But I was a bit surprised that he did not tie into that the need for developing a much more adequately informed public opinion on this matter. When we have that, I feel these other matters will sort themselves out and be relatively easily corrected.

The last comment I would like to make is addressed to Professor Bowman. I was intrigued with his suggestion that we consider taking traffic matters out of the criminal law, as New York has done. But I am not sure I entirely understand his point that New York still was handicapped by having to handle these matters in their court system. If the courts are not used to try these cases and punish the convicted parties, what alternative is available?

PROF. BOWMAN: That is a very fair question. I referred to the New York system, starting in 1929, of designating minor traffic offenses as non-criminal, but continuing to process violations of these infractions through their criminal courts. The point made by Mr. Johnston's paper is that if these infractions are made non-criminal, it

is no longer necessary to process them through the courts. They may be handled by administrative tribunals -- as Workman's Compensation, labor disputes, and numerous other types of controversies are now handled. The courts would still be available for appeals, but the administrative process, working in this manner, could handle a much greater volume of cases than the courts now can handle using the full scale judicial procedure required by the due process clause.

The method which I suggest, and perhaps the only constitutional one we can follow in this situation, is to use the ultimate sanction of license suspension as we do in regulating businesses and other occupations rather than imprisonment. If you assign the alternatives of fine or imprisonment for a violation of a traffic violation -- as is done in the Uniform Vehicle Code -- then, regardless of what you label it, the supreme court is going to say it is a criminal matter with respect to which all the safeguards of due process apply. If the sanction is designated as a fine, with the ultimate penalty consisting of license revocation, we could use our administrative law and administrative agencies to their full and flexible potentials in dealing with drivers. This was an area which I suggested should be researched, and if it does, I believe it will yield valuable results.

MR. MORONY: Mr. Arnold Wise, Counsel for the New York Motor Vehicle Department, is here, and I will ask him to comment on that point.

MR. WISE (NEW YORK DEPT. OF MOTOR VEHICLES): It is true that in New York we designate a violation of the traffic laws as a "traffic infraction". However, our statute specifically provided that procedurally it will be treated the same as a misdemeanor. This, of course, really keeps it in the field of criminal law, and just changes its name. This, of course, is not entirely realistic.

You may be interested to know that there is a study going on in this field by a special Joint Legislative Committee on Reorganization of the Courts, chaired by Justice Henry Ughetta in Brooklyn. He is being assisted in his legal research by Dean Prince of the Brooklyn Law School. They are studying the possibility of removing the traffic violations from the criminal courts entirely, and putting them into some type of administrative tribunal. As was indicated earlier today by our speakers, this would mean removing the possibility of jail sentences for these violations, and depending more on suspension of the driver's license as the sanction for traffic violations.

There are many collateral questions involved in this matter. The due process clause raises some of them. There are also questions of the rules of evidence, among them some that arise from the increasing use of machine records and automation of the record keeping process by state motor vehicle departments. For example, in showing a history of persistent violations on the part of a driver, what rules will be followed in assembling, offering, and scrutinizing the evidence? What happens to the driver's right to confront his accusers? This study at the Brooklyn Law School will deal with matters of the greatest long-range importance.

MR. ENGLAND (D. C. DEPT. OF MOTOR VEHICLES): I would like to comment on some of our speakers' remarks.

Mr. Donigan, and every other out-of-state driver is allowed to drive in the District of Columbia because I, as motor vehicle commissioner of the District, have exchanged a letter with my counterpart in his home state providing for reciprocity in recognition of the drivers' licenses that our respective offices have issued. Yet, I am not sure how this process would be regarded under the theory that Professor Reese has described. Do I understand him to say that Mr. Donigan, as an out-of-state driver, has a right to drive in the District? Or, does he have a privilege?

PROFESSOR REESE: The right of interstate transit -- movement across state lines -- has been recognized as covered by the Privileges and Immunities Clause of the Constitution. And the U. S. Supreme Court has held that one having the right of interstate transit under this clause has the right to use his motor vehicle in another state. However, as Mr. Donigan has pointed out in articles he has written, the court has also recognized the right of states to stop travelers entering their borders and require them to become licensed in that state. The reciprocity which allows drivers from one state to use the highways of another state without obtaining a local license is a practical accommodation of this licensing authority of the states to the demands of convenience and necessity of a highly mobile society. This accommodation permits me, as a resident of Virginia, to drive to work each day in the District of Columbia.

I would have to answer, therefore, that where out-of-state drivers' rights are concerned, the states' recognized power to regulate the entry of "foreign" drivers is substantial, and so the citizen's right to move in interstate transit is subject to the regulatory power of the states where he exercises his right.

MR. ENGLAND: A state may also deny an out-of-state driver any entrance into its territory, may it not?

PROFESSOR REESE: Yes, it may do so; but I doubt whether a state could lawfully prohibit such a motorist from getting a license from that state if he otherwise qualified.

MR. ENGLAND: Assuming I do deny entry to an out-of-state driver, what am I denying? Am I denying one of his rights?

PROFESSOR REESE: You are denying what I called a "liberty". But it is not an absolute denial, since I can receive a license if I qualify under the conditions laid down in the D. C. statutes.

MR. ENGLAND: Where an out-of-state driver is involved, this is generally called a denial of a privilege. I am now wondering whether "privilege" is the right word to use.

PROFESSOR REESE: I associate myself with the statements of Mr. Donigan and Professor Bowman, that labelizing this matter is dangerous. I would like to leave the matter simply as one where we say the District of Columbia can -- under its police power -- deny an out-of-state driver access to its streets until and unless he obtains a license in accordance with its regular procedures. But, because of the nature of the Federal system, the District cannot deny any driver an opportunity to try to qualify for a license, or deny him a license if he does qualify.

MR. HENNESSEE: At the risk of seeming to have a split personality on this point, I think that there is a difference in a person's right to use a highway in his state of residence, and his right to use the highways of another state. I say this is so regardless of the Privileges and Immunities Clause of the Constitution. To me there is no question that the access I have to drive on the streets of the District when I am licensed in another state is a privilege granted by the District.

MR. LARDNER (WASHINGTON POST): Under Professor Reese's thesis, would a person be deprived of his "right" to drive if a motor vehicle commissioner revoked his license to drive for an alleged traffic violation after that person had been acquitted of this offense in court?

PROFESSOR REESE: I think that this type of suspension occurs every day all over the United States. It is common practice among motor vehicle administrators.

As to how the legal rights are involved, I do not think there is any question that the driver's liberty, as defined by the cases interpreting the constitution, is taken away in the situation you described. The significance of this is that because a constitutionally protected liberty is involved, the Federal -- not state, but Federal -- doctrine and standards of due process apply to the disposition of the case by the administrator. This Federal requirement and standard of due process of law has a major role in the decisions that are made by civil administrative agencies in their work.

What are some of these implications? One is that rules shall be promulgated only after public hearings have been held on the proposed rules. Relatively few state motor vehicle regulations are now made with the benefit of public hearings before they are published, but if Federal standards of due process are applied, all would have to have the benefit of this procedure. Such a requirement would have very extensive impacts on the present practices of the states.

Under the Federal definition of due process, I am not sure that the state courts would continue to uphold the administrators in their suspension of drivers' licenses after they had been acquitted for the offense which is alleged to make them unfit to continue to be licensed.

MR. LARDNER: I have always understood that the concept of due process of law was a judicial concept.

PROFESSOR REESE: It is judicial insofar as the courts are the agencies that ultimately interpret or determine the application of the due process concept. But it is a legal concept which applies both to the proceedings that take place in courts and to the proceedings that take place before administrative agencies. It can, therefore, apply to criminal matters, civil matters, and administrative functions performed by public officials.

MR. LARDNER: Do you suggest that in some of these types of proceedings our standards of due process are not as high or as rigorously applied as in others? Don't our constitutional guarantees mean the same things in all their applications?

PROFESSOR REESE: I do suggest that standards vary as between, say, the courts and some types of administrative agencies. But I think this can be explained to some degree by the history of these agencies.

Many of the administrative functions and agencies which we take for granted today can trace their history only back about 20 or 30 years. It takes a while to develop a doctrine of due process which is oriented to the particular function that an agency performs. Administrative law is maturing at a rapid rate in this respect, but it cannot in a generation achieve the maturity that our courts have developed over four centuries. Also, I think that standards of due process which apply to administrative agencies are affected by the fact that often their proceedings must necessarily be more informal and their rules of evidence must be less restrictive than a court's.

To be realistic, I do not see how we can hold a motor vehicle administrator to the same standards of due process that apply to a criminal trial. But he can and should be held to standards which are appropriate to insure fairness in the function he is performing.

DR. GOLDSTEIN (U. S. PUBLIC HEALTH SERVICE): I would like to emphasize the importance to the non-lawyer of what has been opened up here this morning by this discussion of the law. The discussion has pointed up numerous problems of developing factual bases for standards to guide the motor vehicle administrator.

If this committee has another meeting of this type next year -- and I sincerely hope they will -- I urge them to devote the entire session to exploring the facts and fictions, and the hopes and expectations, of driver licensing.

I have spent a good many years of my own career working in this area, and can assure you that such an exploration would yield significantly beneficial results.

MR. WISE: I would like to report a recent case from the New York Court of Appeals which may in the future become a landmark decision. This case held that a defendant in a motor vehicle or traffic violation case was not denied due process of law when the court failed to advise him of his right to have legal counsel. This may be an indication of an attitude by the courts as to whether a traffic offense is a crime or an administrative matter.

Also, in discussing this question of whether traffic offenses should be treated as crimes, no one has given sufficient attention to the differences that exist in the rules of evidence which apply to these two types of proceedings. In a criminal case proof of guilt must be beyond a reasonable doubt; in an administrative proceeding to suspend a driver's license, this high standard of proof has not been demanded.

MR. PERINI (AUTOMOTIVE SAFETY FOUNDATION): Having listened to both points of view that have been expressed in this discussion, I am in complete agreement with the speakers that labeling the license a right or a privilege does not accomplish a great deal. But I am still bothered by the question that if we assume the license is something in the nature of a right, I feel that under our concept of government, efforts should be directed toward putting a person on the road. On the other hand, if it is a privilege, perhaps more effort should be directed toward taking people off the road or restricting the licensees.

If this is a correct analysis of the implications of these labels, it seems to me we are really talking about what direction should be given to the growth of motor vehicle law -- what the underlying policy of our law should be for the future.

It seems to me that this leads to another question: Should we shape the policy of the law according to what we feel we have to do, or what we believe the motoring public feels should be done? If we say the license is a type of right, that fact imposes a mandate on motor vehicle administrators to think more in terms of putting a person on the highway than of restricting him from use of the highway. When we look at the practice of licensing administration as it is now carried on, I believe we find more of a tendency to restrict highway use than to encourage it. Whether this is a correct application of legal principles or not is a question of basic importance to our subject.

I wonder if the discussants have the same reaction as I do to this point?

MR. DONIGAN: I thought I made it quite clear that in my view we are going to have to set much higher standards. Whether you call that a tendency which increases the implementation of this right, or a restriction of it, doesn't make any difference.

Earlier in my remarks I used the illustration of the engineer and airline pilot merely as examples of instances where we require very high standards of fitness in transportation. My point is that the driver of an automobile is a trustee of human life in the same way, although perhaps not to the same degree, as these people whom we require as a commonplace matter to meet high standards. There is nothing wrong with acknowledging that drivers have a right of movement along the highways if we also recognize that these drivers have a related duty to attain and maintain standards of fitness commensurate with the hazards they must deal with. Yet we are not viewing the

driver licensing function in this way. The result is that we often do not know whether or not drivers are competent, because we do not have suitable standards.

PROFESSOR REESE: I agree, and I suggest that in order to get these standards we will need a great deal more empirical information about drivers than we now have. I do not believe we can presume to act on the unproven propositions that, say, all drivers over 65 are dangerous, or all drivers under 25 are dangerous, or no person who has ever been convicted of a felony should be licensed to drive a car. We must require that our standards relate the action of the administrator to the business of driving a vehicle safely. This, as Dr. Goldstein has already reminded us, will require research on a scale heretofore unknown in this field.

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Chalfant, Milo W., Chief, Driver Improvement Control, Michigan Department of State, Lansing, Michigan
Cheshire, Harry V., Jr., General Counsel, Automobile Club of Southern California, Los Angeles, California
Donigan, Robert L., General Counsel, Northwestern University Traffic Institute, Evanston, Illinois
Fisher, Yule, Research Counsel, National Highway Users Conference, Washington, D.C.
Freed, Arthur, Traffic Engineer, Westchester County, White Plains , N.Y.
Gray, C. R., Director, Legal Department, American Automobile Association, Washington, D.C.
Hatfield, G. A., Driver License Director, Minnesota Department of Motor Vehicles, St.Paul, Minnesota
Hennessee, Joseph P., Counsel, American Association of Motor Vehicle Administrators, Washington, D.C.
Hricko, Andrew, Attorney, Insurance Institute for Highway Safety, Washington, D.C.
Montgomery, Robert Jr., Executive Director, National Committee on Uniform Traffic Laws & Ordinances, Washington, D.C.
Murphy, Joseph P., Safety Responsibility Officer, D.C. Department of Motor Vehicles, Washington, D.C.
Murry, C. Emerson, Director, Legislative Research Committee, Bismark, North Dakota
Perini, Victor J., Jr., Staff Attorney, Automotive Safety Foundation, Washington, D.C.
Wise, Arnold W., Counsel to the Commissioner, New York Department of Motor Vehicles, Albany, New York