

o Bee

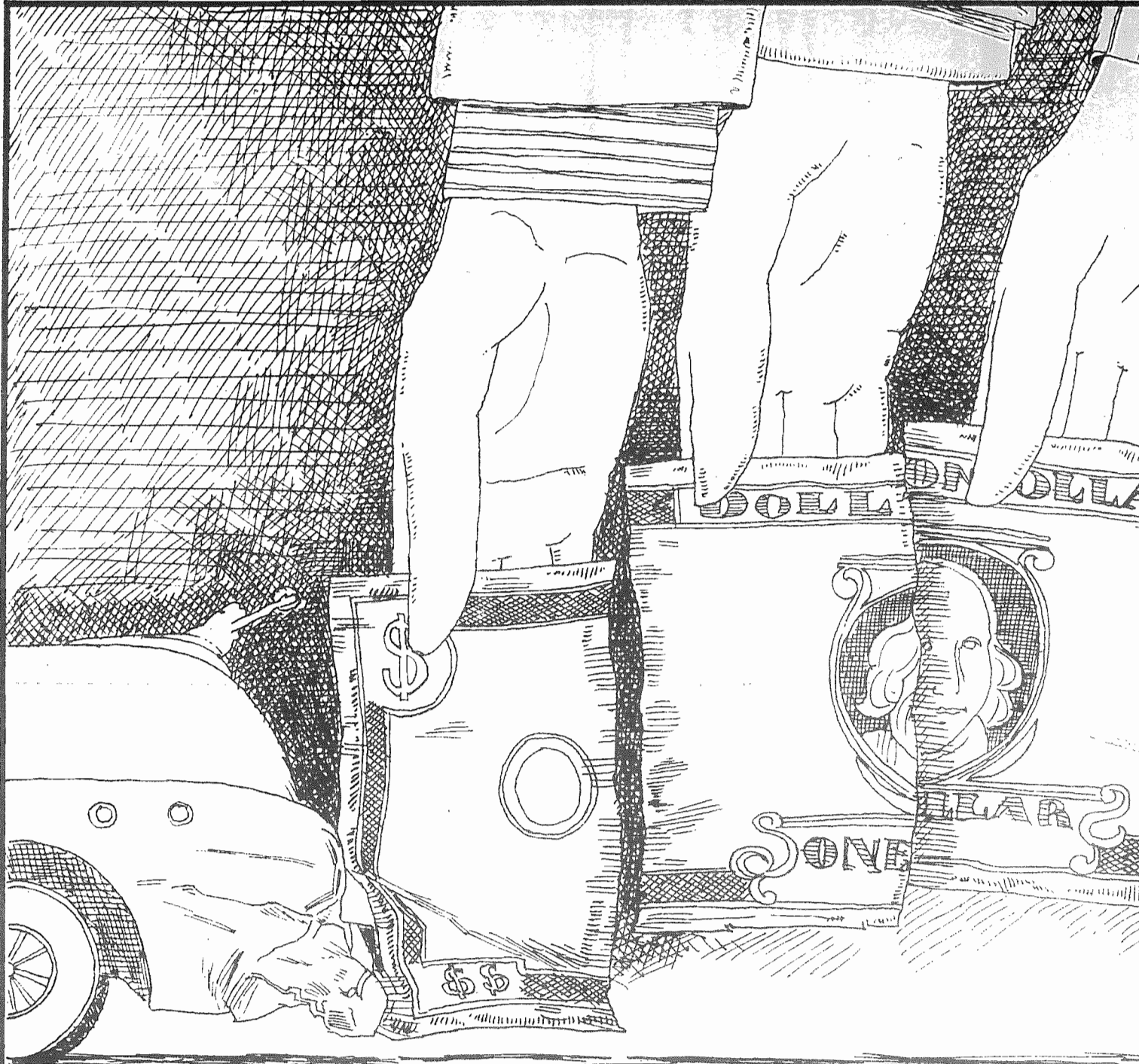
Sunday, April 1, 1990

UM

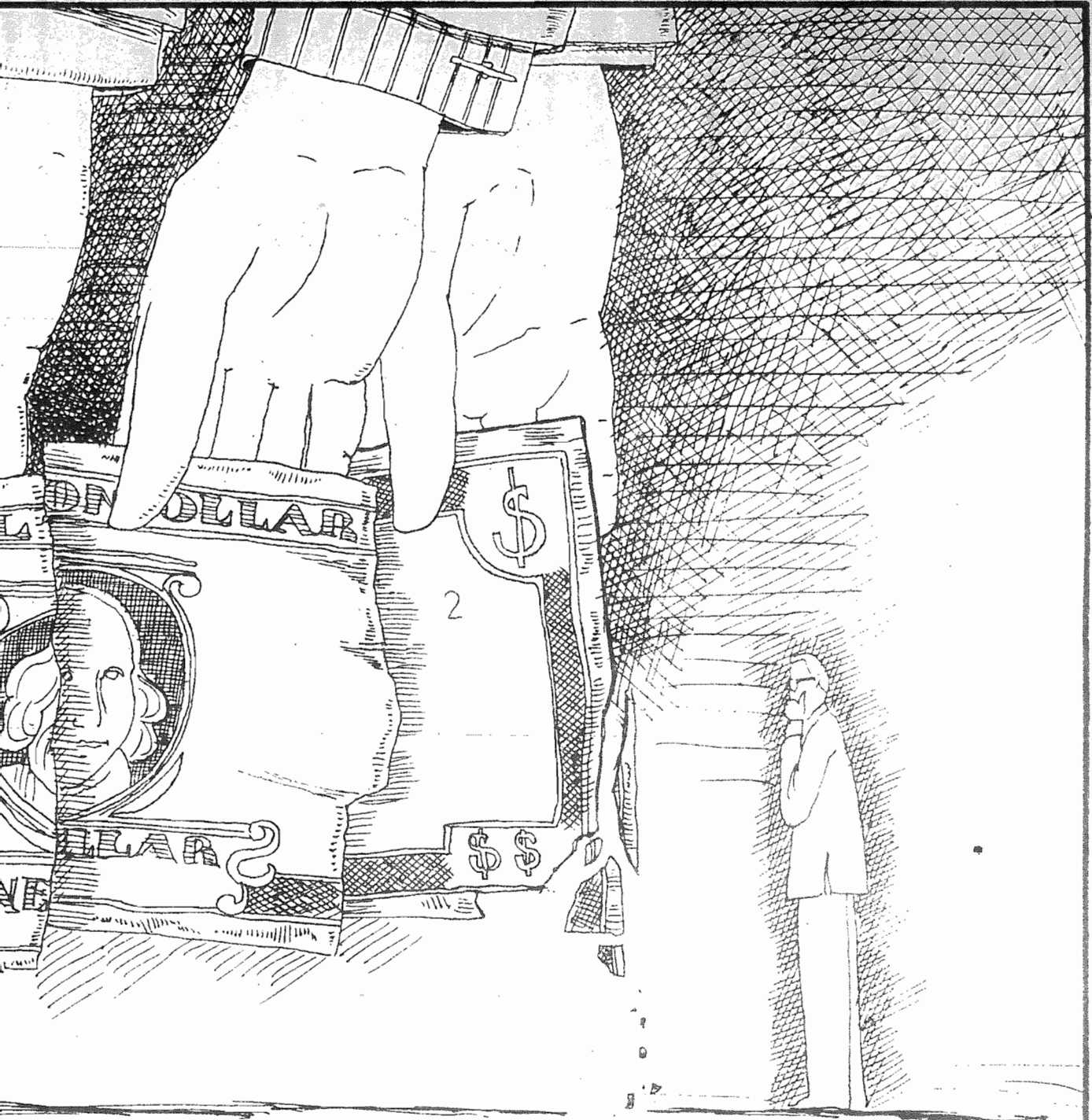
▶ **OPINION**

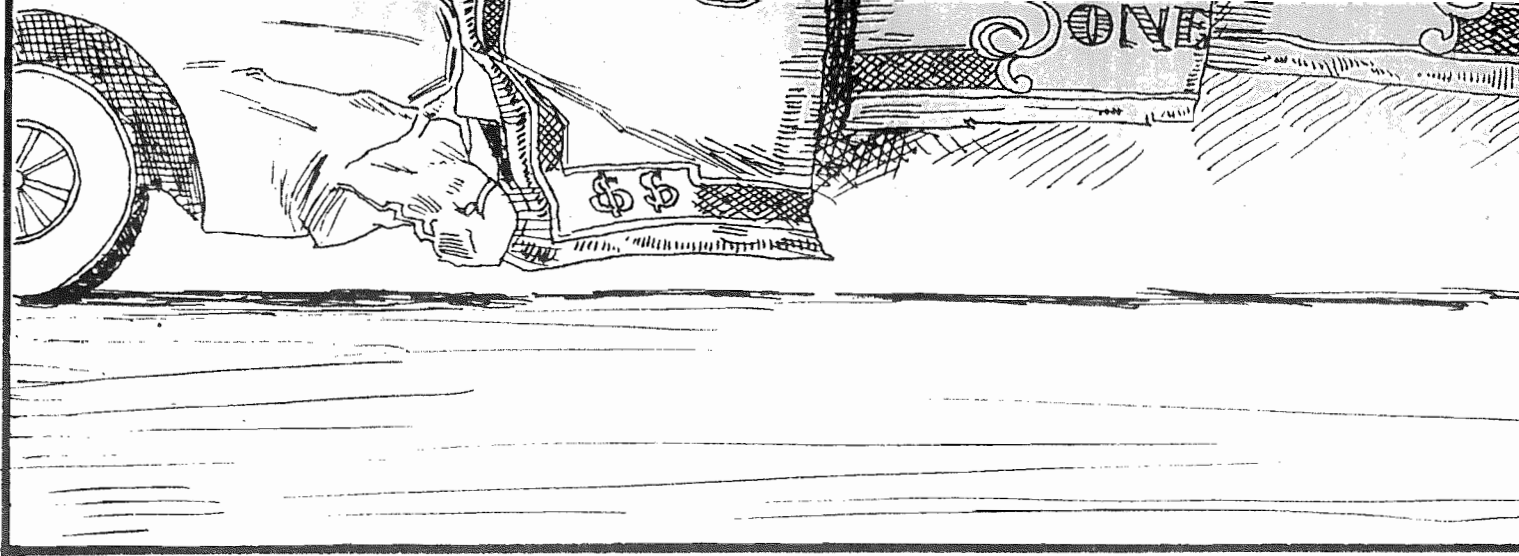
...

How to slash car insu



r insurance costs





Face it: The current system for injury

By Stephen D. Sugarman
Special to The Bee

FOR MORE than a year now, the folks who brought us Proposition 103 have been slugging it out with the auto insurance industry, both in the courts and in hearings before the insurance commissioner. The way things are going, it would be foolish to expect to see our car insurance bills soon rolled back to 1987 levels, much less to the "20-percent lower than 1987 rates" promised by Proposition 103.

There is, however, at least one easy way to quickly slash auto in-

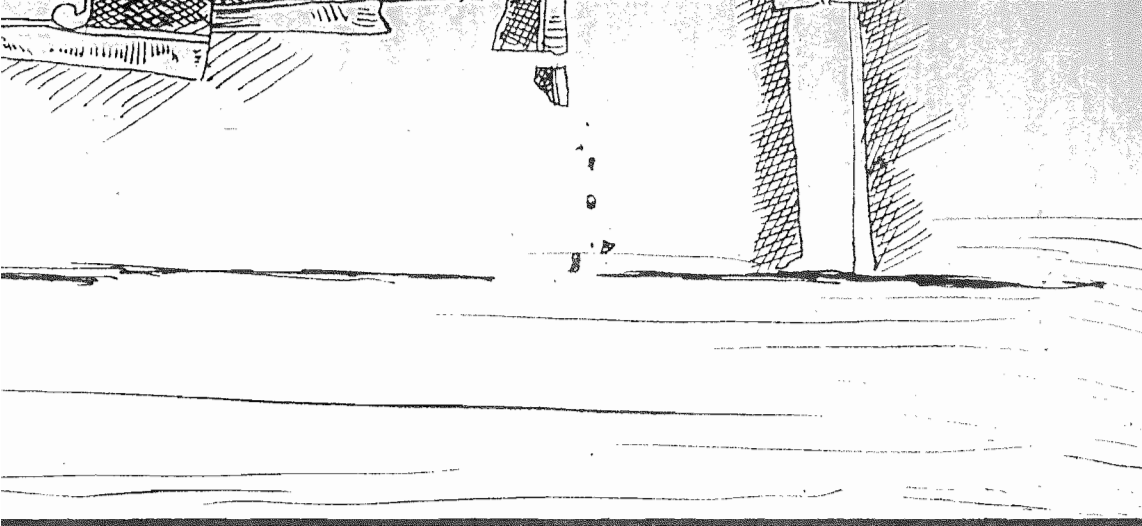
Stephen Sugarman is a professor of law at the University of California, Berkeley, and the author of Doing Away with Personal Injury Law (Quorum Books).

surance costs. But it will require a new way of thinking about compensating people injured in car accidents. This solution replaces the existing lawsuit lottery with a far more efficient Auto Accident Compensation Corporation, and funds the corporation through modest motoring fees instead of automobile liability insurance. Before

presenting the details, some background information may be helpful.

Four things are seriously wrong with the existing system. First, we award successful personal injury law plaintiffs an extravagant amount of pain and suffering damages. Indeed, more than half the money paid out in personal injury claims is for pain and suffering. At one end, people whose pain is long gone by the time they collect (if they ever had any pain at all) are handsomely bought off because of the nuisance value of their legal claims and the insurers' desire to close the books on them. At the

and the classroom



Bee illustration/Jim Chaffee

Injury liability is a mess

ne back-
be help-

y wrong
First, we
al injury
avagant
ng dam-
half the
al injury
ering. At
n is long
ollect (if
all) are
cause of
eir legal
desire to
. At the

other end, at least where a deep pocket is available, our legal system pays enormous sums to the very seriously injured. To be sure, few people would wish to change places with the seriously injured even with their big pain and suffering awards thrown in. But surely the point of the system should not be to make these victims millionaires. Yet that is exactly what we do for the lucky few who, in effect, win the tort law lottery.

Second, today you are generally entitled to recover from your injurer's insurance company those losses that are already covered other ways — by health insurance,

social security, medicare, sick leave, disability insurance and the like. The upshot is either inappropriate double recovery or the wasteful passing around of the money from one large enterprise to another, as liability insurers reimburse health insurers and so on.

Third, we devote a colossal amount of money to legal fees — on both sides. Claimants' lawyers in auto cases typically pocket a third or more of what they win for their clients in settlement or trial, and the defense side, which is paid hourly rather than on a percentage basis, winds up costing policy

See **INSURANCE**, Forum 2

man fatherland" however, prove more elusive than the servative election slogans imp and Kohl's bill may soon e due.

Statistically, the results v clear enough. Just under an a lute majority voted for the con vative parties of the Alliance, o to 41 percent alone for Kohl's ter party, the eastern Chris Democratic Union. The East man Social Democrats (SPD) vored by the pollsters only a m ago, received a shockingly lo percent.

To further confound the sters, the Party of Democratic icalism (the reincarnated Com nist Party of East Germany) w seemed destined for extinction January, polled an astonishing percent. The electoral alliance the "citizens movements" helped guide the revolution fall — and were the first to ca free elections at a time when Christian Democrats were voicing unqualified support fo Communist Party — was sent the political wilderness wi scant 3 percent of the vote. R than devouring its children, Germany's revolution has e tively marginalized them.

The key to the election lies, peculiar schizophrenia en dered by the post-war divisio

See **GERMAN**, Foru

How to beat the insurance

Continued from Forum 1

holders pretty much the same as what the plaintiff lawyers charge.

Primarily as a result of these three features, only about 15 cents of every auto liability insurance dollar paid in by the driving public actually gets back in the pockets of auto accident victims to compensate for actual out-of-pocket losses.

Finally, on the other hand, many auto accident victims who are seriously injured by the negligence of another driver are vastly under-compensated even for their out-of-pocket losses.

Although we think we are paying through the nose for auto insurance, most California drivers actually have too little insurance from the viewpoint of good social policy. Two in five currently buy a pitifully low level of liability insurance (under \$25,000), and more than half carry less than \$50,000.

Even worse, an estimated one in six California car owners are scofflaws who carry no liability insurance at all — even though it is supposed to be mandatory. (Is it any wonder that creative attorneys have dreamed up lawsuits against deep-pocket highway designers and the government agencies that are supposed to maintain those roads?)

Is there a sensible way out of this mess? The people behind Proposition 103 claim that a lot of slush can simply be squeezed out of the current system. While that is possible, there is reason to be skeptical.

Economists usually consider an industry with more than 100 sellers, and where the lead four firms control less than half of the market, to be highly competitive. And, if consumers are paying far above the fair-market price for auto insurance, why hasn't some smart insurance company jumped into the market with lower prices and taken State Farm's, Farmers' and Allstate's business away?

Even OPEC, after all, has been unable to hold its cartel together,

I HAVE A better idea that could eliminate automobile liability insurance premiums entirely. Here's how:

People injured in auto accidents would no longer be able to bring lawsuits against other drivers. As a result there would simply be no need for auto liability insurance for bodily injury.

Instead of filing lawsuits, auto accident victims would file claims with a newly created public Auto Accident Compensation Corporation ("AACC"). As described below, the AACC would generously compensate auto accident victims for their actual losses after obtaining its revenues from the motoring public in new ways.

The AACC's first revenue source would come from a modest increase in the state gasoline tax — a few cents a gallon. This approach generally makes those who drive more pay more, and that seems fair since those drivers, other things being equal, are more likely to be in more accidents. At the same time, this approach gives a deserved reward to those with fuel-efficient cars.

Second, car registration and driving license fees would be increased. Not only would this be a revenue source for the corporation, but perhaps more importantly, in terms of perceived fairness, those fees could be adjusted to reflect both past driving behavior and the likelihood that someone will be in an auto accident in the future. For example, those with moving violation tickets, those who are new (and typically young) drivers and those who live in congested areas could be asked to pay more. Moreover, a system of differential license fees based upon past driving behavior would promote punishment and safe driving goals more effectively than does the idiosyncratic imposition of premium increases that insurers employ today.

Third, there would be a tax on new car sales. More than a mere source of revenue, this tax could

jury when they are). Of course, often times it is the driver, not the car, that is the cause of the accident; but only one portion of the funding of the plan would come from the car tax.

One substantial advantage of this proposal over the current so-called "compulsory" liability insurance system is that its funding sources would be hard to avoid. Evading the gasoline taxes would be extremely difficult, and, as today, relatively few would be willing and able to risk going without a driver's license and/or a car registration. Of course, the new car tax could be avoided by keeping your old car longer, and that would be a particular benefit to the poor who frequent the new car market less often. But these seem to be advantages of the proposal, rather than detriments.

In addition, there would be enormous administrative savings in such a plan. Think of the reductions in auto insurance advertising expenses, in commissions for insurance agents and brokers, and, most importantly, in lawyers — since there would rarely be any sort of lawsuit brought in connection with an auto accident.

Although motorists would save a great deal of money now spent on insurance, they would, of course, have to fund the AACC. But the sum of their contributions to the corporation's revenue sources would be dramatically less than what motorists now pay for auto liability insurance for bodily injury.

TURNING TO the benefits side, under my proposal the AACC would pay for all reasonably incurred and otherwise not reimbursed medical expenses of up to \$500,000 per person. It would cover, for so long as necessary, otherwise unreimbursed income losses of up to \$4,000 a month (which is more than what 90 percent of Californians earn). And it would pay for other reasonably incurred expenditures for rehabilitation, replacement services

prev
subs
nor
thre

A
and
prog
auto
who
there
sions
injur
for a
drive
the i
prese
dent
comp
prove
insur
the A

Sim
again
ries
AACC
need
case
But a
posab
neces

Fol
gan e
no lo
dama
to p
again
age o
them
their
ity of
buyin

Un
rathe
"coll
peop
simp
(along
strum
rately
home
policy

Mo
posab
tort li
ing so
than a

actually have too little insurance from the viewpoint of good social policy. Two in five currently buy a pitifully low level of liability insurance (under \$25,000), and more than half carry less than \$50,000.

Even worse, an estimated one in six California car owners are scofflaws who carry no liability insurance at all — even though it is supposed to be mandatory. (Is it any wonder that creative attorneys have dreamed up lawsuits against deep-pocket highway designers and the government agencies that are supposed to maintain those roads?)

Is there a sensible way out of this mess? The people behind Proposition 103 claim that a lot of slush can simply be squeezed out of the current system. While that is possible, there is reason to be skeptical.

Economists usually consider an industry with more than 100 sellers, and where the lead four firms control less than half of the market, to be highly competitive. And, if consumers are paying far above the fair-market price for auto insurance, why hasn't some smart insurance company jumped into the market with lower prices and taken State Farm's, Farmers' and Allstate's business away?

Even OPEC, after all, has been unable to hold its cartel together, and there are a lot fewer suppliers of oil than of auto insurance. Besides, even if there are some inefficiencies and excess profits in the current auto insurance system, Proposition 103 does nothing at all about the three problems noted above.

The AACC's first revenue source would come from a modest increase in the state gasoline tax — a few cents a gallon. This approach generally makes those who drive more pay more, and that seems fair since those drivers, other things being equal, are more likely to be in more accidents. At the same time, this approach gives a deserved reward to those with fuel-efficient cars.

Second, car registration and driving license fees would be increased. Not only would this be a revenue source for the corporation, but perhaps more importantly, in terms of perceived fairness, those fees could be adjusted to reflect both past driving behavior and the likelihood that someone will be in an auto accident in the future. For example, those with moving violation tickets, those who are new (and typically young) drivers and those who live in congested areas could be asked to pay more. Moreover, a system of differential license fees based upon past driving behavior would promote punishment and safe driving goals more effectively than does the idiosyncratic imposition of premium increases that insurers employ today.

Third, there would be a tax on new car sales. More than a mere source of revenue, this tax could be varied to reflect the accident history of the car model in question. This approach would reward manufacturers and consumers of safer cars and impose higher costs on more dangerous cars (those that are more often in accidents and tend to lead to more bodily in-

particular benefit to the poor who frequent the new car market less often. But these seem to be advantages of the proposal, rather than detriments.

In addition, there would be enormous administrative savings in such a plan. Think of the reductions in auto insurance advertising expenses, in commissions for insurance agents and brokers, and, most importantly, in lawyers — since there would rarely be any sort of lawsuit brought in connection with an auto accident.

Although motorists would save a great deal of money now spent on insurance, they would, of course, have to fund the AACC. But the sum of their contributions to the corporation's revenue sources would be dramatically less than what motorists now pay for auto liability insurance for bodily injury.

TURNING TO the benefits side, under my proposal the AACC would pay for all reasonably incurred and otherwise not reimbursed medical expenses of up to \$500,000 per person. It would cover, for so long as necessary, otherwise unreimbursed income losses of up to \$4,000 a month (which is more than what 90 percent of Californians earn). And it would pay for other reasonably incurred expenditures for rehabilitation, replacement services and the like.

Moreover, if this were desired, the plan could afford to pay moderate sums for pain and suffering (up to, say, \$50,000) to those auto accident victims who suffer a serious disfigurement or a substantial permanent impairment, or who are

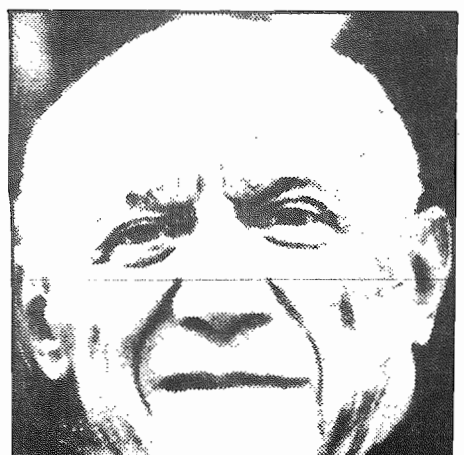
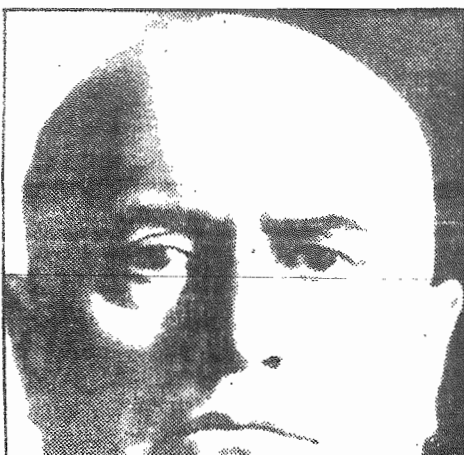
Hey, what this country needs

Continued from Forum I

ing this proposition either. Every subject has its special language, and you cannot know the subject, or read the subject, if you do not know its language.

These ideas are, as I have said, certainly true, but not, as I have said, startling. I do not know a single teacher who disputes them, although I suppose it does no harm to be reminded of them once in a while.

Hirsch proceeds from these truths to a consideration of the en-



ce game

prevented by the accident from substantially returning to their normal activities for more than three months.

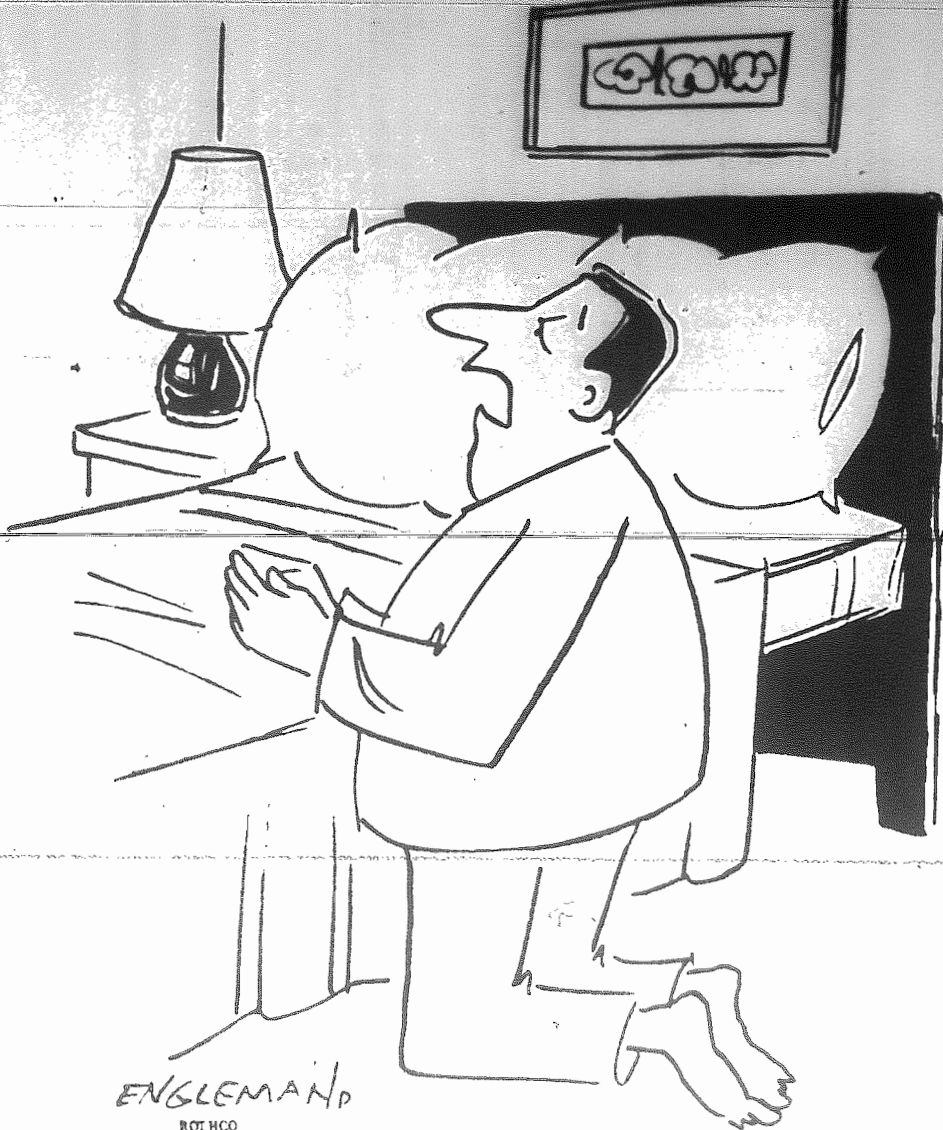
As in workers' compensation and the Social Security disability program, benefits would be paid to auto accident victims regardless of who caused their injury (although there would, of course, be exclusions for intentionally self-inflicted injuries and, if this were desired, for an alcohol- or drug-impaired driver whose impairment causes the injury). As compared to the present system, many auto accident victims who now go without compensation (because they can't prove fault or the defendant is uninsured) would be compensated by the AACC.

Simply replacing lawsuits against motorists for personal injuries with compensation from the AACC would leave motorists still needing auto liability insurance in case they cause property damage. But additional features of my proposal would largely eliminate the necessity for that coverage, too.

Following the successful Michigan experience, car owners could no longer sue for auto property damage. Instead, people who wish to protect their own vehicles against the financial risk of damage caused by either others or themselves will have to purchase their own protection — as a majority of motorists already now do by buying "collision" insurance.

Under my proposal, however, rather than buying a separate auto "collision" insurance policy, many people would probably be able simply to list their automobile (along with jewelry and musical instruments, for example) as a separately "scheduled" item on their homeowner's or renter's insurance policy.

Motorists would, under my proposal, continue to have residual tort liability for carelessly damaging someone else's property (other than another car). But most people would probably be able to insure that liability risk through the general personal liability insurance coverage that routinely comes along with homeowner's and rent-



'Lord, help us fight hunger, keep peace in the world and please lower insurance rates.'

THERE IS, of course, some danger that, as a public organization, the AACC would become politicized or inefficient. But with careful planning, these risks could be minimized.

For example, the Social Security Administration has run the Social Security system for more than 50 years on a cost-effective basis and with remarkably little scandal. So, too, in those states (not California) where the government is the sole provider of workers' compensation insurance, the scheme's administration is not thought to be inferior to that in states using private insurers. And, we have generally favorable reports from the western Canadian provinces, where a state entity is the sole seller of basic auto insurance.

Under my proposal the AACC would have an independent corporate status, perhaps like the Corporation for Public Broadcasting or the Regents of the University of

pointed by the governor subject to the approval of an appropriate screening panel on which the insurance commissioner, among others, would sit.

Moreover, so as to avoid the hiring of state employees to process claims, the AACC could be directed, as Medicare does today, to draw upon the expertise of the private sector by contracting out to insurance companies, on a competitive-bid basis, the claims administration function.

Were my proposal adopted, Proposition 103's goals would actually be achieved — and then some — through a plan that sharply reduces underlying costs of insurance company overhead, of lawyers, of duplicate recovery and of excessive payments for pain and suffering.

Of course, a significant portion of the auto insurance business would disappear. But since nearly all the insurers are crying that they

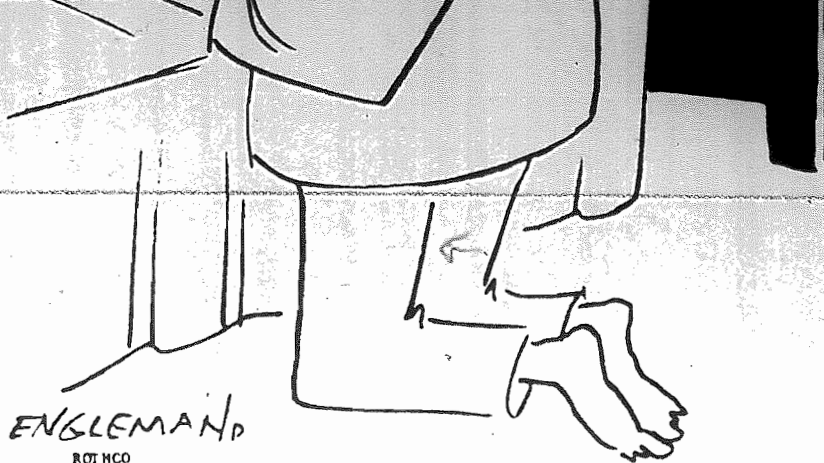
compensation (because they can't prove fault or the defendant is uninsured) would be compensated by the AACC.

Simply replacing lawsuits against motorists for personal injuries with compensation from the AACC would leave motorists still needing auto liability insurance in case they cause property damage. But additional features of my proposal would largely eliminate the necessity for that coverage, too.

Following the successful Michigan experience, car owners could no longer sue for auto property damage. Instead, people who wish to protect their own vehicles against the financial risk of damage caused by either others or themselves will have to purchase their own protection — as a majority of motorists already now do by buying "collision" insurance.

Under my proposal, however, rather than buying a separate auto "collision" insurance policy, many people would probably be able simply to list their automobile (along with jewelry and musical instruments, for example) as a separately "scheduled" item on their homeowner's or renter's insurance policy.

Motorists would, under my proposal, continue to have residual tort liability for carelessly damaging someone else's property (other than another car). But most people would probably be able to insure that liability risk through the general personal liability insurance coverage that routinely comes along with homeowner's and renter's insurance today. These motorists would not need separate auto insurance at all.



'Lord, help us fight hunger, keep peace in the world and please lower insurance rates.'

THERE IS, of course, some danger that, as a public organization, the AACC would become politicized or inefficient. But with careful planning, these risks could be minimized.

For example, the Social Security Administration has run the Social Security system for more than 50 years on a cost-effective basis and with remarkably little scandal. So, too, in those states (not California) where the government is the sole provider of workers' compensation insurance, the scheme's administration is not thought to be inferior to that in states using private insurers. And, we have generally favorable reports from the western Canadian provinces, where a state entity is the sole seller of basic auto insurance.

Under my proposal the AACC would have an independent corporate status, perhaps like the Corporation for Public Broadcasting or the Regents of the University of California. As with state appellate judges today, for example, the AACC's directors could be ap-

pointed by the governor subject to the approval of an appropriate screening panel on which the insurance commissioner, among others, would sit.

Moreover, so as to avoid the hiring of state employees to process claims, the AACC could be directed, as Medicare does today, to draw upon the expertise of the private sector by contracting out to insurance companies, on a competitive-bid basis, the claims administration function.

Were my proposal adopted, Proposition 103's goals would actually be achieved — and then some — through a plan that sharply reduces underlying costs of insurance company overhead, of lawyers, of duplicate recovery and of excessive payments for pain and suffering.

Of course, a significant portion of the auto insurance business would disappear. But since nearly all the insurers are crying that they are losing money on that business, they could hardly complain, could they?