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# Techniques of Investigation in Personal Injury Practice

*Harry F. Steele*

This article is not presented as *the* answer to the problem of making an investigation. There is no single approach applicable to all situations. Investigating is as much a way of thinking as it is a way of acting. Its purpose is to uncover, define, and preserve every available detail of an incident in order to reconstruct the facts under controlled conditions. In

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this manner, any observer of these facts — attorney, judge or juror — may determine for himself the who, what, when, where, how and why of the occurrence.

## WHO MAY MAKE AN INVESTIGATION

In Ohio there are no statutes establishing rules of ethics, procedures, bonding, registration, training, or qualifications for investigators. The State legislature has shown some interest in enacting legislation to require registration, bonding and testing of investigators, but this has not been actively pursued.<sup>1</sup> At present, any private citizen can make an investigation. Most official records are open to the public; however, two factors limit the number of people who will examine these records: first, the non-professional does not know what to look for nor where to find it, and second, most custodians of these records discourage examination by private individuals.

There are no accredited schools offering courses in the area of civil investigation. Several schools offer excellent courses in police administration and police investigations, but the problems of a criminal investigation differ greatly from those of a civil one.<sup>2</sup> Most investigators in the personal injury field are former insurance claims adjusters and their knowledge of a plaintiff's investigation is based upon the opposite needs of the defense. The ability to determine what could not have happened (the defense approach) is valuable, but inadequate for the attorney faced with the burden of proof. Police or insurance training is a good back-

1. The tests being considered are similar to those required for notary public and real estate licenses.

2. The University of Michigan offers a degree in Police Administration; Northwestern University has the famous Traffic Institute for law enforcement officers; the Southern Police Institute has a similar program. Policemen from all parts of the world attend these classes.

ground from which a general outline of procedure may be developed. But, a plaintiff's investigator must be familiar with the interests of both the police and the defense so that, as the investigation develops, he may anticipate and attempt to disprove any explanations which may differ from the plaintiff's theory.

In addition to formal training in methods and procedures, there are other intangibles which claims men or investigators consider necessary qualifications. How they are expressed may vary, but basically these qualities are:

1. An ability to meet and get along with people;
2. An above-average facility with language and a knowledge of semantics;
3. An ability to listen, direct a conversation, and retain what is heard;
4. An ability to report findings accurately;
5. An open and imaginative mind;
6. A willingness to try against odds.

#### ETHICS

The ethics of an investigator are his own for there is no written code governing his actions. Because the investigator is usually employed by an attorney, it is of great concern to the attorney that his agent, the investigator, does not conduct himself in such a way as to make the attorney's ethics suspect. To the lay individual, who does not know and may not meet the attorney, the investigator speaks for the attorney. For this reason, it is desirable that the investigator adopt a code of ethics compatible with the American Bar Association's Canons of Ethics. If this standard is observed, there is less chance that the value of evidence obtained by the investigator will be lost by virtue of unethical conduct.

The advantage to be gained in using an investigator is not in obtaining information that the attorney himself could not obtain ethically. Rather, it is in saving the attorney the concern and loss of time involved in obtaining the information on his own.

#### CLIENT RELATIONSHIPS

The investigator's relationship with his employer's client is frequently indirect. This may be an advantage, since it prevents the investigator from becoming emotionally involved in the injuries or problems of the client and enables him to retain an objective approach to the facts. It is difficult to remain impartial when one is aware of the pain and suffering of the client. The client has come to the attorney for the express purpose of seeking redress. He wants an advocate, and he

will, therefore, present the most favorable set of facts. The setting of these facts in proper perspective by an unbiased investigation is, therefore, an evident necessity.

However, there are times when it is necessary to interview the client directly. The client may be the only person from whom the facts may be obtained and new information may indicate either a deliberate or accidental discrepancy in the story first related by the client. It is not uncommon for a client to invent a set of facts that he feels will be most favorable to a recovery. This may be due to ignorance, but the attorney must never ignore the possibility that his client may be trying to make him a party to a fraud.

The best time to interview the client is after the investigation has been completed. It is at this time that discrepancies may be uncovered and details that have been overlooked or forgotten may be added to complete the factual picture. If the investigation should indicate that the client has lied, it is best to determine this before trial. Furthermore, it is at this point that the attorney can determine if there is any law to substantiate a claim in light of the known facts. Up to this time he has been dealing in possibilities; he is now able to decide whether there has been any negligence on the part of the defendant, and whether his client did or did not contribute to the accident.

## GENERAL APPROACH TO A PROBLEM OF FACTS

### *Sources of Information*

The first step in any investigation is to determine the various sources of available information and those persons in a position to give this information. Sources will be determined by the location and nature of the accident.

### *Official Reports*

If the accident occurred in a rural area, the accident report would be found at either the State Highway Patrol or the County Sheriff's office. In a city, depending upon its size and facilities, the report would be in either the city hall or a central police station. The face sheet of this report will normally indicate if there have been any pictures taken by the police and will also list names of witnesses. It may be possible to examine this document before a copy can be made and mailed to the investigator, and if such is the case, it can be an early opportunity to get valuable leads on possible witnesses and photos.

Some police departments allow examination of the statements taken at the time of the accident. It is advisable, in order to avoid contradictions, to read all available previous statements before seeing witnesses for

supplemental statements. However, because the police are interested in criminal negligence, statements taken by them will seldom satisfy the needs of a civil negligence suit.

In Ohio, when a person has been injured, regardless of the amount of damage to either vehicles or property, a report is required to be filed with the Bureau of Motor Vehicles in Columbus, Ohio.<sup>3</sup> Both parties involved in an accident must file this report, which lists the names of the participants and the names of the insurance carriers. The report also contains an account of how the person filing it believes the accident occurred. This latter factor may give an indication of the defense that will be offered when the defendant is put on notice. The Bureau of Motor Vehicles also cross-indexes these reports, and if the driver has been in any previous accidents, the Driver's Abstract will contain dates and locations thereof, as well as previous violations.

### *The Scene of the Accident*

Once the official reports of the accident have been reviewed, and before the witnesses are interviewed, it is good practice for the investigator to visit the scene of the accident and familiarize himself with the terrain. He should check for whatever traffic controls were present, determine if they were working at the time of the accident, and when they were installed or repaired. He should become familiar with the landmarks the witnesses will be using for references and any particularly hazardous conditions that may have contributed to the accident, such as vision obstructions and optical illusions. Knowledge of the scene, and the positions of the witnesses at the time of the accident will help in evaluating the worth of the witnesses' stories, for such facts determine if the witnesses were in a position to observe the events described.

Knowledge of the scene is particularly valuable in dealing with the "eyewitness." The eyewitness is a peculiar animal and one must be careful in interviewing him. When he relates his experience he generally feels that he must tell a complete story, regardless of where in the sequence he first perceived the events as they progressed. Therefore, in order to correctly evaluate his statement, one must be keenly aware at least of the physical situation in question.

### *Photos*

The use of cameras by police, as an investigative aid, is becoming more common. Frequently, however, police photos are taken only in cases of serious accidents in which the parties are obviously injured and

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3. OHIO REV. CODE § 4509.06.

litigation is highly probable. The circumstances that dictate this policy are largely financial.

In a rural area, or small town, an accident may be given considerable coverage in the local paper. Although these papers may not have full-time photographers available at the time of the accident, they frequently receive pictures from local amateurs who happen upon the scene. Many times these pictures are of such poor quality as to be unsuitable for printing, but they are kept by the papers in their files and can be valuable.

If an accident happens at night, and pictures are taken with a flash bulb, there may be evidence appearing in the printed pictures that was not known to the police when their report was made. Many objects that are invisible to the naked eye at night are recorded in the side lighting of a flash exposure. Debris and glass are frequently overlooked at the scene, but are prominently visible in printed pictures. Debris that drops closest to the point of impact is normally so scattered by the time daylight arrives, that if it were not for these pictures, it would be impossible to determine where it did fall.

An accident that illustrates this took place in a rural area. A salesman had been driving his car all day en route to his home. Late at night, his car was found demolished, after a collision with a telephone pole on an unlighted country road. He appeared to have fallen asleep at the wheel. He was dead and there were no known witnesses. Since, without evidence to the contrary, the only reasonable explanation was that he had fallen asleep, the police accepted this theory. Several days after the accident, however, a rural weekly paper printed the story of the accident and included in the article a picture apparently taken at the scene. The paper had received several pictures taken by a local resident who was on the scene before the cars were removed. In one of these pictures there appeared some shiny material and debris on the side of the street on which the salesman had been driving. The police were shown the pictures, and upon returning to the scene, discovered that a farmhouse driveway entered the highway at about the place in which the debris lay and found what turned out to be headlight glass. A check of the farmer's car indicated that he had been in a front-end collision, and after being questioned, he admitted that he had pulled out of his driveway and had collided with the salesman's car. The farmer was convicted of leaving the scene of an accident and the widow prevailed in a wrongful-death action.

In looking at pictures, consideration should be given to whether the damage that appears in the photo corresponds to the type of accident reported by the witnesses. Many pictures will show damage that can be matched directly to a part of the other car, or damage from a previous accident. If marks are identifiable, they may help establish point and angle of impact between the vehicles. With all pictures, it is necessary

to make certain that there has not been reverse printing. If no letters or numbers appear clearly, relation of objects to each other, such as steering-wheel to auto, or direction of auto to side of road, must be determined.

The items of evidence most often overlooked in evaluating pictures are: whether the picture was actually taken at the scene; gouge-marks on the highway; debris that dropped from initial and possible secondary impact; damage which is inconsistent with the witnesses' accounts of the accident; condition of vehicles prior to the accident; conditions of the highway and surrounding area; possible witnesses among the onlookers and vehicles surrounding the accident area; and weather conditions peculiar to the locale of the accident.

Rather than searching for support of a theory when studying photos, it is best to look for clues from which to develop a theory that can be substantiated by witnesses and physical evidence. An entire picture should not be viewed at one time. Instead, each section should be considered separately and then the picture should be viewed as a whole.

#### *Approach to Sources*

The success or failure of an investigation may hinge on the manner and attitude of the investigator in his approach to the various sources of information. This not only applies to witnesses but to all sources. Often, people dealing with various police departments are denied access to records, primarily because of their attitude. Many of these people may have no real interest in the matter, and are, therefore, refused the information; however, a large number of those refused are attorneys and claims men. All too frequently, an attorney will enter a police station, especially in a small town, with an air of arrogance, with the result that the department will deliberately not co-operate with him.

It takes very little effort to be respectful to these policemen and this respect often breeds more than mere co-operativeness. Statements, personal notes, diagrams that were not included in the official accident report, and background information on the participants will often be made available. This psychology, of course, applies in contacts with the custodians of *any* record sources.

One of the major reasons why there is misunderstanding between the police and those who are interested in their reports is the failure of attorneys, investigators, and claims men to appreciate the functions of the police in an accident situation. The primary function is not to make the report, but first to care for any injured parties, and second to prevent any further damage because of the debris or congestion, while at the same time to try to restore the free flow of traffic. Only *after* these duties are

attended to, is any effort made to preserve whatever information is available concerning the accident. Until recently, there was very little effort expended to make elaborate reports in accidents where there had been no obvious injury to the participants. If there was no cause for police prosecution, these reports were simply marked "Civil" and filed. In the interest of public relations and to prevent policemen from being embarrassed on the witness stand during a civil trial, greater efforts are now being made to record and report all information developed during an investigation, on the assumption that any accident may be reviewed in court.<sup>4</sup>

Proper attitude cannot be stressed too strongly. The investigator should never forget that the only reason he is making a contact is to discover everything that the source knows of the case. Some investigators and attorneys defeat themselves by not giving the witness an opportunity to express himself in his own way. This can easily result from attempting to lead a witness, or anticipating his answers, or trying to impress him with how much the questioner knows about the case, instead of being interested in what the witness knows.

#### *Witnesses — Known and Unknown*

Once the basic information is obtained, it is time to locate and contact witnesses. From the police report the names of the participants, and possibly passengers, in one or both cars are acquired. The report will also list witnesses known to the police. This does not mean, however, that these are the only witnesses known, but rather, that they are the ones considered pertinent to the police investigation. There may have been other people at the scene who are known, but who did not furnish any worthwhile information as determined by the interviews at the scene. The more serious the accident, the more likely there will be witnesses other than those listed on the face sheet of the accident report.

Occasionally, a client will furnish the attorney with names of witnesses who made themselves known to the client at the time of the accident, but did not remain at the scene and were not known to the police. Since these people probably have given their names voluntarily to the plaintiff, it is not uncommon that they have already decided that the defendant is liable, even though they may not have the slightest notion of the applicable law. In interviewing such persons, the investigator must be extremely careful to delete liability judgments from their statements, and to restrict their comments to facts.

Frequently, witnesses who were not interviewed by the police at the

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4. Police schools and manuals today spend considerable time in training officers on how to dress, sit, speak and conduct themselves under both examination and cross-examination on the witness stand.

time of the original investigation will be discovered by carefully studying photographs. This is often the case where pictures, printed days after the accident, reveal identifiable auto license numbers or people in the background. Examples of this are numerous. If the accident has been serious and the highway has been blocked, a photograph may easily turn up valuable eyewitnesses. A car appearing in the picture directly behind the damaged cars most likely was the first to arrive upon the scene or may have been close to the scene at the time of the accident. Similarly, the clothing of persons in these pictures may bear a company name, or the persons themselves may be local residents, easily identifiable by other residents in the area. Trucks are occasionally visible, bearing company names on their sides. Tow trucks may have moved the cars apart for the pictures to be taken or to remove injured occupants. In some areas there are no contracts for tow-truck hauling, and many of the local garages use police radios to learn of tow work. The first truck on the scene gets the job, but it may be that several trucks came to the scene and are visible in the pictures even though the police report lists only one company as having done the towing. This same situation may occur with ambulances when more than one appears at the accident.

Often, obvious witnesses are overlooked. For example, seldom will a one-man ambulance crew be found. Most ambulances will have, in addition to a driver, a helper who rides in the rear with the injured person. Similarly, rural areas have a great number of volunteer firemen and police auxiliaries. Many of these men have installed radios in their cars and will respond to emergency calls to help the full-time police control traffic. These men may be able to furnish valuable "after-the-fact" information. Also, where there is a special accident investigation unit to handle serious accidents, the accident report is probably not written by the first policemen on the scene. Nevertheless, these radio-car teams and beat patrolmen, who are there to aid the injured and to direct traffic, should be interviewed. If an accident occurred in a business section, a deliveryman may have seen it. Many times a store operator, being inside, has not observed the accident, but can name a customer who has told him about it. In most business sections there will be people who habitually shop at the same time on the same day. Furthermore, these centers of activity are generally served by public transportation and the buses will be on schedule with regular drivers. A check of the schedules will determine if there has been a bus in the area at the time of the accident. Bus drivers frequently leave the scene of an accident but later turn in whatever information they have about the events in the event that police or other investigators should make inquiry. Habitual passengers can also be located in this way. If there is a loading dock in the area, a check should be made with the shipping and receiving clerks for possible

deliveries on the date and at the time of the accident. If there are occupations nearby that normally require appointments, such as doctors, dentists, beauty operators, or where visitors are logged in and out, arrivals and departures at the time of the accident should be checked.

One of the most frequently overlooked witnesses is the person who first reports the accident. He is listed as the "Informant" in the incident or radio-dispatch report. This individual may not have returned to the scene after he has called in the report and even though the police, as a general rule, insist on knowing the name of the person making the report, it may not be given to the accident investigation unit and he may, therefore, be ignored.

People who were listed as witnesses and who were driving may have had passengers in their cars who did not give their names to the police. As a general practice the investigator should ask all witnesses if they know of any other persons who may have been at the accident. In a rural area the general store is a good clearing-house for this type of information.

All the above examples are fertile fields of information, often ignored.

### *Taking Statements*

Each investigator will develop his own method for taking statements. It will be as individually stylized as his manner of speech. Generally, good statements will follow a basic form and cover the who, what, where, when, how, and why of the incident. In writing a statement it is advisable to establish a proper sequence of events, and to allow the witness to make any additional comments he may feel are important. After the witness has been identified by name, address, phone number, and employment, the first questions which should be asked are: "How did you happen to be at the scene of the accident?" "What was the first occurrence that attracted your attention to the fact that an accident was going to happen, was happening, or had happened?" "Did you hear something or see something out of the ordinary?" These questions will give the first clue, not to what the witness did see, but to what he could *not* have seen. This is essential in order to preserve whatever factual information the witness has, and to protect him from being discredited for making a statement concerning facts he could not have observed. If the questions are put in this way, most witnesses will realize, before stating an entire theory, the difference between what has actually been seen and what has been later pieced together to form a complete sequence of events. The very fact that a witness may know more than he was in a position to see is a good indication that there were other witnesses who did have the other information.

After the witness has related his story, it is a good practice to ask a few routine questions, such as: "Is there anything else about this accident that you may have remembered since we started talking, that we may have skipped over earlier?" or, "Do you know of anyone else who may have been at the scene, who could furnish additional information about the accident?" and, "Has anyone else been out to talk to you about this accident?" If there has been, "Did he ask any questions about this accident that we may have missed?" These questions serve a dual purpose; first, they may furnish information that has been overlooked during the first part of the interview, and second, they have a tendency to dispel any impression the witness may have that he is the key witness and will thereby be directly involved in any litigation. This latter factor puts him at ease and keeps him friendly.

An important problem is how to acquire a signed statement. The simplest method is to hand the witness the statement with a pen as though he is expected to sign. Most people will do what is expected of them. He should be put at ease during the interview, and the impression should be developed during the conversation that the interviewer is interested only in a statement of those facts that the witness knows to be true. It is not advisable to start the interview with a pad and pen, and the phrase "taking a statement" should never be used. When paper is taken out it is for the purpose of "taking notes." One should not attempt to put the witness in the position of feeling that he is the judge and jury, being asked to pass judgment on the case. Whenever possible, references to participants should not be on a personal basis. Questions such as: "What did the car do?" or "Where did the car go?" are preferable to, "What did the driver do?" It is better to let the witness tell his story completely before trying to reduce it to writing since the primary objective in conducting the interview is to find out what the person knows about the accident. The secondary objective, if possible, is to get it in writing. When the "taking notes" aspect has been completed, the witness should be asked to read the information he has given to confirm its correctness. As a general rule, a deliberate mistake that will be obvious to the witness, such as the misspelling of his name, should be inserted in the statement to induce him to make corrections in his own handwriting. Such corrections are sufficient confirmation of the statement, should he refuse to sign. The corrections should be as close to the beginning and the end as possible to indicate that these were the only items that were found to be objectionable in the statement.

One mistake frequently made by attorneys in taking statements is to make them sound like an affidavit rather than the witness's own story. It is not uncommon to have a key witness completely discredited because the person who took the statement has used words that the witness

was embarrassed to admit he did not understand. When asked, on the witness stand, if he understands everything he is supposed to have said in his signed statement, he is forced into the admission. A statement should be the expression of facts known to the witness as he tells it, not the impressions of the investigator.

It is important to keep personalities from interfering with the witness's statement of facts. If the interviewer uses proper language, the witness will probably respond with a similar style. A witness should never be talked down to for this puts him in a defensive position and he will be reluctant to talk freely for fear of ridicule. An impression of neutrality in the investigation should be created to avoid developing the feeling, on the part of the witness, that he must take sides. If the witness should ask the investigator for which litigant he is working, he should be so informed, and emphasis should be placed on the fact that the interviewer is trying to make an impartial investigation to determine what happened, rather than who was at fault. The witness should have no conclusions drawn for him and he must not feel that the investigator is attempting to prove or disprove anything he has to say. It is best to be as brief as possible and still cover a complete range of questions. Long and wordy statements should be avoided and a telegraphic style, including all of the pertinent facts, should be used. The witness will appreciate efforts to conclude the interview efficiently and effectively.

A reluctant witness is not unusual, and many will begin the interview with the statement that they know nothing about the accident. It is a mistake to argue with such a witness, or insist that he does have information and must reveal it; he will more likely respond to questioning about whether he was in the area at all, or whether he has heard anything about the accident. He may be an important "before" or "after" witness, and not be aware of what he could contribute. Therefore, the investigator should ask him to tell whatever he does know without giving him the impression that he is required to relate only specific points. If, in fact, he does know nothing of the accident, it is advisable to take a "know-nothing" statement in order to rebut a sudden "recollection" of the facts at the time of trial.

The finished product of the interview is the signed statement. It probably will not contain all the information desired, since seldom will one witness have a complete knowledge of an entire accident. However, as statements are accumulated from other witnesses, they begin to fit a pattern. One may contain information of the events leading up to the impact; another, the collision; and another, the results. Statements are parts of the jig-saw puzzle of facts. Contradictions in statements of various witnesses are not uncommon because seldom will two people agree

on a single set of facts. If all do agree, one should be suspicious of the relationships between the witnesses.

Because of the differences in statements of fact, it is advisable to withhold final evaluation as to theory until every witness has been seen. Only if a witness completely destroys a theory, should it be set aside, and even in such a situation, it should not be totally disregarded, since witnesses have been known to adjust facts to satisfy their own theories of liability.

A good percentage of the information necessary to conclude a case successfully can be obtained by the investigator without filing a petition. However, there are situations where it becomes necessary to use the courts' authority to obtain information refused during initial interviews. This should be a last resort measure since an unfriendly witness who is required to submit to questioning will seldom volunteer information that may be pertinent.

### *Evidence*

An investigator should be thoroughly familiar with the rules of evidence. His primary concern, however, is not as much with admissibility as it is with preservation of facts and identification of exhibits. If the evidence is removed from the scene of an accident, or is found elsewhere, the investigator is responsible for establishing its relationship to the facts and maintaining controlled supervision over it until it is presented in court. One of the most effective methods of establishing this relationship of evidence to occurrence is through the employment of pictures which show where the particular evidence was found, and close-up photographs which establish its condition at the time of discovery.

What determines when and what evidence should be preserved? The investigator should be constantly aware of the advantages gained by having evidence which a juror or claims man can hold in his hands, since it can thus be examined and cannot be explained away. Physical evidence limits speculation and helps the viewer reconstruct, as closely as possible, the situation in which the evidence was involved. Therefore, anything that would help in the accurate reconstruction of the accident should be preserved.<sup>5</sup>

### *Reconstruct the Accident*

After all of the available information, reports, statements, and other accounts of the accident have been accumulated, the final theory of liability is developed. Since it is necessary at the time of trial to reconstruct

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5. A typical case, in which evidence was preserved, involved a rotted out wooden step on an outside common stairway. The step gave way when the plaintiff walked on it. When the new steps were installed, the old ones were placed in a trash barrel. The old steps were photographed in the barrel and examination of them clearly showed the general rotten condition of the steps prior to their replacement and at the time of the accident. Replacement of the steps indicated remedial action by the defendant, acknowledging a dangerous condition.

the accident in the minds of the jurors, it is necessary, at this point in the investigation, to do the same in one's own mind. One of the best methods of doing this is through the use of a diagram in which each known location is marked in its proper sequence. This aids in determining a time-distance relationship, (for example in an auto accident case, how far the parties were away from actual impact at different time factors).

Once it is determined exactly what took place, the investigator is in a position to speculate as to what any of the participants could, or should have done to avoid the accident. Were there any unreasonable, improper, or illegal actions by either party? The theories must be in agreement with known facts. For example, if a witness gives an estimate of speed, he must not only be qualified to give the estimate but, he must also have had the opportunity to make the estimate. Because of the suddenness of the action in an accident, and the emotional situation created when people have been seriously hurt, some speed estimates are based upon results of impact and not upon observed motion. These estimates are often made in retrospect; for example, the estimator may not have had time to watch the motion of the car, but thinks he knows because it would be a reasonable estimate of speed, in light of the results. The time it takes for the events to actually take place may seem slow or fast. This is an individual reaction that varies with the degree of the individual's involvement in the act. To the person involved directly, the action will be "fast," but to the detached witness the action will be "in slow motion." This time relationship may even uncover a party-defendant that has not been previously considered, through his own admissions as a witness. As a general rule, the faster the witness says an accident transpired, the closer he was to being involved.

When the various discrepancies in the witnesses' stories have been resolved, a diagram of the theory should be made, with the various positions marked in relation to a time-distance factor. At how many seconds and feet from impact were the conditions for the accident established? The first location of the participants and witnesses should be five seconds (or whatever critical time factor is involved) away from impact showing relative positions at that moment, then four seconds, three seconds, etc., up to and including zero seconds, or impact. In this way, one can determine, in theory, based on fact, at which point the accident could no longer have been avoided. The conditions of the drivers, their observance, or disregard of reasonable conduct, and the nature of the particular failure to react, will be determinative of the theory of negligence.

### *The Value of Thoroughness*

A plaintiff's investigator judges his ability not upon the number of cases that are won in court, but on how many are settled because of a

provable liability theory resulting from his work. Even in many cases not settled, the question of liability is eliminated and the only question remaining for trial is that of damages. For this reason, and also in those cases which must be tried, it is essential to make a thorough investigation when the case is first undertaken by the attorney. Thoroughness includes the good points as well as the bad. One can never be satisfied with an investigation. There is always something more that could be learned about the facts. The facts discovered may do the job, but given enough time, more could be uncovered.

One case is typical of this problem. The case involved two men in a private two-seat airplane that crashed into a mountain in Wyoming. Both men died as a result. The pilot was extremely well-qualified, having an instructor's rating, an instrument rating, several thousand hours of logged time as pilot in control of aircraft, and flight experience in the area of the crash on several previous occasions. His passenger was a non-pilot, who had gone on a vacation trip with the pilot and was sharing expenses.

The defendants argued that the accident was caused by "An Act of God," and would not make a reasonable settlement offer for the passenger's widow. They contended that the pilot had been caught in a sudden "downdraft" and was thereby unable to maintain altitude. The plaintiff argued that the pilot had deliberately flown into this area and that in doing so had been negligent and had placed the plane and its occupant in danger. It was his contention that, if the pilot had had enough gasoline, as a reasonable person, he should have flown around the mountain rather than attempt to fly over it under the existing conditions and in the type of plane being used. One of the major areas of conflict was, therefore, the amount of gasoline in the plane after the crash. It became necessary to reconstruct the return flight in order to settle this conflict.

The equipment the men had had in the plane, at the time of the crash, included three cameras. A check with relatives showed that there had been film in these cameras and that the pictures taken had been developed. These pictures were taken to the State Parks Office in Wyoming, where they were identified and the sequence in which they had been taken was determined. Some had been taken enroute to the vacation spot and others had been taken on the trip home. Since the point of departure and time of takeoff were known, it was possible to recreate the route taken. One of the pictures, taken at the airport where they had landed to start the vacation, revealed that the oil tank had been removed from the plane. It was learned that a small oil leak had developed and the tank had been taken to be repaired. The man who did the repair not

only remembered the men and the tank, but also recalled that they had had an air map and had talked about the proposed route home. The men had decided that if there were enough gas when the last airport, before the mountain was passed, they would attempt to fly over the mountain instead of going around it, as was normally done. The passenger was not aware of any dangers, made no comment and allowed the pilot to make the decision. With this information, a general check was made of all other airports within flying distance of the proposed route which disclosed that the plane had not landed at any of those fields to refuel. From the specifications of the airplane, furnished by the manufacturer, and from information gained in talks with several experts who had flown this type of airplane in the same terrain, it was established that the plane was almost out of gas when the attempt was made to fly over the mountain. The experts reported that under the weather conditions that existed on the day of the accident, the downdrafts were to be expected and for this reason, none of them would have attempted to fly over the mountain in the same situation.

On the evidence thus obtained and on the testimony of the experts, the jury found for the plaintiff. The defendant was granted a new trial because of error in the record, but the case was settled before the second trial.

Another case in which thoroughness limited negotiations to a question of damages, involved a dry-cleaning business. During a snowstorm the owner-operator of the business used a piece of carpeting to protect a newly linoleumed floor. The carpeting was in front of the main entrance to the business, and the arrangement of counters required customers to make a sharp right angle turn after entering the main door. When the plaintiff entered the store and made the required turn the carpet slipped from under her and her wrist was broken in the resulting fall.

A piece of the new carpeting and also of the new linoleum was obtained from the owner. When the two pieces were put in contact, it was obvious that there was almost no traction between them. Although this case was not as complex as the previous one, after the witnesses had been seen, there was little lacking in order to settle it.

### CONCLUSION

Many cases which should be investigated cannot support the expense. The unfortunate result of this situation is that many borderline cases have been settled for minimal amounts when liability could not be readily determined from the surface facts. There is no foolproof method of de-

termining in advance which cases should be investigated and which should not. Many cases which appear, from preliminary examination, to be justified claims, develop into "no liability" cases and many that appear to have little merit, become "classics." No cases have been lost because of thoroughness, but all too many have been lost due to lack of investigation.