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ABSTRACT

Insurance companies, following the campus unrest of the late 1960's and early 1970's, became rather wary of insuring college and university campuses because of the great amount of risk involved. As a study committee found, however, the risk of insuring educational facilities had been overestimated due to widespread newspaper and television coverage of isolated incidents that were generalized to the entire higher education community. This document is meant to be a guide to college and university administrators who are unaware of the means and approaches to minimizing risks in order to obtain lower insurance premiums. Chapters are included in the guidebook on: (1) Risks Peculiar to Higher Education; (2) Discovering and Evaluating Risks and Exposures; (3) Loss Prevention and Loss Limitation in Higher Education; (4) the Nature of Insurance; (5) Property Insurance; (6) Casualty and Liability Insurance Coverages; (7) Insured Fringe Benefits; (8) The Insurance Market; and (9) Risk Management, Institutional Administration, and Policymaking. (HS)

RISK MANAGEMENT AND INSURANCE

Guidelines for Higher Education

By JOHN F. ADAMS

NATIONAL ASSOCIATION OF COLLEGE AND UNIVERSITY BUSINESS OFFICERS

RISK MANAGEMENT AND INSURANCE

Guidelines for Higher Education

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NATIONAL ASSOCIATION OF COLLEGE
AND UNIVERSITY BUSINESS OFFICERS
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Publication of this text is an element of a special management improvement program developed in the field of risk management and insurance by the National Association of College and University Business Officers and conducted with the support of The Ford Foundation.

Foreword

IN THE SUMMER of 1970, following the campus confrontations including those at Kent State and Jackson State and a number of serious property damage incidents occurring at other colleges and universities, insurance companies began to look seriously at the higher education market, raising premiums and rearranging some coverages and canceling others. After NACUBO had received a number of queries with respect to such problems and their solutions, a Committee on Insurance was appointed to review and evaluate the situation.

As a first step, that Committee conducted a mail survey of member institutions which confirmed, that the market for insurance was becoming increasingly difficult for many colleges and universities. An analysis of the results and the Committee's discussions with representatives of the insurance business suggested some of the problems. The findings also suggested that there were actions which, if undertaken by colleges and universities, could apparently improve their market attractiveness among insurers. The Committee also concluded that the insurance field had, in effect, over-reacted to the environment of confrontation, and the Committee accordingly began to plan a program of activities responding to the current needs for information.

First, the Committee felt that the treatment of confrontations by the news media had created near panic in the insurance market by highlighting a few serious situations and generalizing from them. Second, it noted the widespread misunderstanding of higher education operations among insurers and the near total lack of knowledge with respect to insurance operations among those charged with responsibility for handling it in higher education. To attack both problems, the Committee invited to an exploratory meeting representatives of several insurance companies known to do a substantial amount of business with institutions of higher education and representatives of the major insurance trade associations.

At this meeting, which would be the first of several, discussions in depth of the problems and the possible means of adjusting to them made it reasonably clear to both the higher education and insurance representatives that neither side had substantial knowledge of the operations of the other and that this condition was responsible, at least in part, for some of the current market problems. After other meetings, information concerning college and university attitudes and security programs and the necessity for reappraising

the market began to filter through the insurance field. At this same time, reduction in both student and community violence toward institutions or, at least, moderation of its treatment by the media, also became a factor, and insurers, some of whom had actually declined to write college and university coverage, began again to accept higher education as a more normal risk.

On the other side, it was patently obvious that higher education was in considerable measure responsible for its own insurance plight, having too frequently ignored many of the principles of ordinary risk management in the structure and organization of campus and program. Because of the long and smooth history of insurance dealings, few institutions had given real attention to insurance and to the simple business techniques essential to its application.

Thus it seemed clear to the NACUBO Committee that its first responsibility was to highlight the significance of risk management in the operations of higher education and to bring its significance into focus for top-level administration and trustee groups so that these operations could be given appropriate emphasis in program development and campus operations. Second, it seemed to the Committee that its responsibility to NACUBO members required that it provide background information and some policy and technical or procedural recommendations to those primarily responsible for insurance operations in higher education, *i.e.*, the business officers.

The Committee set as its first goal the preparation of a short policy statement, designed primarily for consumption by policy-level officials, trustees and regents, to assist in bringing the risk management and insurance situation into focus as a part of overall management and to assist the business officer in stimulating attention to this vital area by his academic counterparts and university presidents and trustees. The second objective of the Committee was to provide information to the NACUBO membership as such and education for those responsible for handling financial management and insurance.

Accordingly, it commissioned the development of this *Guidelines*, which is designed to put the principles of risk managment in perspective and to suggest some of the managerial techniques which may be used in approaching the normal college or university operation.

It was decided that the emphasis should be on problems and techniques, not on engineering and insurance detail, though clearly an understanding of the implications and regulations applicable to each is essential. In effect, the result is a kind of primer that sets forth the rationale and techniques for the management of risks and the purchase of insurance. The content is organized around the perils and risks in higher education, their discovery and management; the principles of insurance and the extent of its capacity to deal with property and program problems, and, finally, the techniques, data sources, and personnel who may be used effectively in structuring an appropriate approach to a program for risk management and insurance.

It should be emphasized that this is an approach, not a detailed "how-to-do-it" manual. It is designed to highlight the significance of specific problem areas and to suggest broad approaches and the personnel who may help to execute them. While the insurance and fringe benefits problems are of insufficient magnitude in many American institutions to warrant development of an expert staff dedicated to their solution, in nearly all institutions enough budget and effort are expended in their management to warrant development of a managerial specialist in this area. To facilitate this development and provide interim strength, the objective of this work is to equip the business officer to understand the extent of the problem, to give him direction as to how to deal with it, and to improve his understanding of those persons who may be helpful to him. For those institutions having full-time personnel in these areas, this *Guidelines* may serve as an idea source which may be helpful in suggesting perspective for dealing with parts of or all of the problem or as a frame of reference for comparison of their programs.

A detailed risk management and insurance handbook for municipal governments has been published by The National Underwriter Company. This contains much information on both risk management techniques and insurance, providing a source book relative to particular problems. Another National Underwriter publication of interest and value is *Risk Manager's Guide* (1972) by Bernard L. Webb, R. C. Addicks, Jr., and Claude C. Lilly. In the Committee's judgment, this *Guidelines* too, will be useful to the business officer as a means of checking the approaches used by those working with his specific situation and/or in coming to understand the specifics of what he has.

Among the NACUBO Committee's activities has been the organization of a series of regional Risk Management and Insurance Workshops for review of materials and for study of college and university problems. The first of the workshops was held in Atlanta in the spring of 1972, and as a result of that experience the text of the *Guidelines* was revised to clarify difficult points and to emphasize problems apparently of greatest interest to the participants. The second workshop was held in Washington, D.C. in September, 1972, and the text was put into final form following that meeting. However, it still is generalized to assure utility with respect to principle, for specific situations need to be investigated and handled locally by those familiar with the local environment, the institutional objectives, and possible alternatives. The Committee will be giving continuing attention to college and university risk management and insurance problems, and persons having specific questions may refer them to the Committee for review.

The work of this NACUBO Committee on Insurance has been supported by a special grant to NACUBO by The Ford Foundation. This project, together with the insurance workshops, is an element of the total management improvement program for higher education sponsored by NACUBO. Special thanks are due to Mrs. Mariam Chamberlain, of The Ford Foundation, who met with and encouraged the Committee in this work.

Finally, this Foreword would not be complete without special acknowledgment of the prodigious and selfless work performed by Dr. John F. Adams, of Georgia State University, whose knowledge and skill in the field of insurance are universally recognized. The original writing of this manual was done by Dr. Adams; his associates on the Committee offering suggestions and editorial comment. For so generous a contribution of time and talent Dr. Adams has the warmest thanks. Acknowledgment also is made of the assistance and cooperation of the University Insurance Managers Association, which is represented on the Committee by Mr. Stanley R. Tarr and Mr. Warren R. Madden.

FOR THE NACUBO INSURANCE COMMITTEE

David R. Baldwin
Chairman

Author's Preface

PREPARATION OF *Guidelines for Higher Education* was undertaken by this writer with some trepidation. As a long-time teacher in the field of risk management and insurance, I am conscious of the great volume of the risk and insurance materials already available, all of them technical and most of them highly specific with respect to problems and solutions. Thus I began this work fully aware that, in attempting to develop a satisfactory discussion of risk management and insurance principles as they apply to colleges and universities, I might be embarked on an impossible task. But the need for the attempt was great, and I was encouraged in it by persons in insurance as well as by those in higher education. This small volume is the result.

To arouse interest in risk management and insurance problems in the higher education context—to suggest approaches to the problems peculiar to the academic institution—was the objective of this *Guidelines*; to produce a textbook on risk management and insurance was not. This should be clear to my colleagues both in academe and in the insurance field lest the work appear to them too highly selective in its treatment of complex matters. Clearly there is more to the subject than this text explains, but if this exposure encourages the development of management practices that reduces risk and promotes better uses of insurance resources in higher education, the objective of this effort will have been accomplished.

It must be emphasized at the outset that the text has been organized about the perils, risks, and exposures in higher education and their discovery and management. The techniques of risk management, including a brief development of the principles of and coverages provided by insurance, have been presented. No attempt has been made to be exhaustive in any area, for entire textbooks have been written on each of the subjects covered. The effort herein has been to select those problems most germane to higher education and to present them, as such, together with frameworks of alternative solutions.

The college or university administrator interested in the field will wish to refer, perhaps, to materials available in published form with respect to risk management and insurance. Recent textbooks (cited in the text) dealing with both problems and techniques are available in each of the specific areas treated. Technical sources such as the *F, C and S Bulletins* and a number of such services supply up-to-date information on policies and forms and special techniques for their handling.

In organizing these *Guidelines* by peril, rather than by insurance package or type of policy, it is hoped to supply background that will make the technical materials more meaningful. In this regard, the text has been arranged to set out the insurance background (Chapter V), to present a brief treatment of property perils and some of the insurance alternatives available for dealing with them (Chapter VI), to cover liability and other casualty perils and some of the insurance alternatives for handling them (Chapter VII), and to note certain personal or "fringe benefit" perils (Chapter VIII), with some of the organized insurance coverages available with regard to them.

There are many persons whose assistance or encouragement in this work I acknowledge with thanks. I am grateful for the understanding and cooperation of the administrative officers of Georgia State University, who recognized sympathetically my time limitations with respect to university responsibilities as a result of this undertaking. I acknowledge with special thanks the help of Dean Kenneth Black, Jr., of the Georgia State University School of Business Administration, and Dr. John W. Hall, Chairman, Department of Insurance, both of whom read and commented on this work. The help of Dr. Hall, particularly in the treatment of property insurance, was invaluable.

Special thanks are due to the members of the NACUBO Committee for their patient reviews of the manuscript at various stages and for their comments on it. So, also, the gracious help of the representatives of the insurance trade associations and certain of the carriers who met with the Committee and participated in the planning of this project should be acknowledged. Many read the entire work and commented on it in depth.

I also acknowledge with gratitude the dedication of Mrs. Julie Hanson who has typed this work several times and without whose understanding and efficient assistance the work could not have been accomplished.

The interest and understanding of my wife and family were also essential ingredients to the completion of this *Guidelines*. Because much of the time and effort which has gone into the work has been taken from evenings and weekends, their lives have been affected most by this project work.

Although the help of many has been influential in shaping this book, the final responsibility for the organization of materials and the content is mine.

John F. Adams

Atlanta, Georgia
October 2, 1972

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Glossary

Risk on Campus: An Overview

Risk, which may be defined as uncertainty as to the occurrence of a given event, pervades all areas of human life and endeavor. Risks of financial loss from a number of natural perils, or from actions based on the exercise of professional or personal judgment, are inherent in the operation of every enterprise, public or private, large or small. One of the responsibilities of management is to identify perils and the related areas of risk and, by evaluating each, to establish a basis for institutional decision making to deal with them.

This manual is concerned only with nonspeculative risks, those that may result only in loss, either through destruction of or illegal removal of property, including subsequent losses resulting from prevention of normal operations and those related to injury of third parties. These risks cannot produce gain, if this were possible, economically productive activity would eventuate and there would be no reason to consider risk management and insurance activities with reference to them. These nonspeculative risks are those which are eligible for insurance coverage.

RISK MANAGEMENT AND INSURANCE

In planning for security, whether personal or institutional, one evaluates the chances of loss and decides whether to undertake a particular risk, to take steps to minimize it, or to avoid it entirely. If one decides to take a risk, either because it is unavoidable or because it is essential to his objectives, he will normally attempt to maximize his security by reducing the chances of loss, by taking countermeasures, or by transferring its financial effects to others through the use of insurance or some other hedging device.

The financial results of taking nonspeculative risks may be significantly reduced, or substantially eliminated, through the use of a social device known as insurance. Using the principle of probabilities to determine the loss

potential of a specific risk for a group exposed to it. Insurance makes it possible, through the pooling of such expected experience, to accumulate a fund equal to the projected losses. In effect, the potential financial losses are calculated in advance and each member of the group contributes to a pool an amount representing the proportion of his exposure to the total risk, so that if losses do occur those who suffer them may recover all or a significant part of them. By this process, an uncertain risk is replaced by the certainty of recovery, at the price of a fixed sum (the premium) paid to a risk taker (the insurer), who organizes a pool to assume the loss costs of the group.

Because the cost of loss is a function of the probability of its occurrence, it is profitable to compare the costs of minimizing losses with the costs of assuming and paying for them. One of the factors that affect the price of insurance is the degree to which sound risk management principles are used in the operation of the facility or program subject to risk. Lowering the probabilities of loss results in a lower premium. Since sound management can reduce the total volume of loss costs for the entire group, the total premium necessary to offset the losses also may be reduced.

In the broadest sense, risk management includes both financial management and the use of physical and human engineering techniques. Obviously, property must be protected by safe operation; buildings must conform to fire codes, fire detection devices and sprinkler systems may be installed, and other actions may be taken to reduce the chances and the size of potential losses. Similarly, one may reduce the chances of liability claims by construction of appropriate stairwells, providing appropriate staff education, and taking other steps to reduce the potential for injury of person or property. But many of these steps are costly and the decision, whatever it may be, must be based on an analysis of the potential. After determining the loss prevention steps to be taken and their impacts, the remaining chances of loss from both property damage and liability must be insured if the institution is to be fully protected from financial loss. Balancing the costs of security measures with the costs of potential loss in the light of the institution's mission and policies becomes the function of the officer charged with risk management.

The risk manager, thus, must be able both to isolate areas of risk in program and facilities and to appraise the costs of reducing risk by installation of safety equipment, appropriate modification of facilities, and other actions. At the same time, he must measure the reduction in insurance costs that will result from these actions. In order to perform such an analysis, however, he must first understand the policies of the institution and the needs of each academic discipline, he must understand the techniques of reducing or sharing responsibility both in financial and social terms, and he must be able to quantify these for measurement against changes in insurance costs and other income impacts. In the last analysis, it is his role to preserve assets and income. Since this involves understanding the perils, the risks associated with

them, and the means of adjusting them for managerial purposes, he must be able both to decide a course of action and to implement it. Thus, he must be at the policy level, or at least have access to the financial policy maker. He must also be thoroughly knowledgeable in the field of insurance, since this is one of the major devices he uses in managing institutional risk.

RISKS ASSOCIATED WITH HIGHER EDUCATION

Colleges and universities are unique social entities, the missions of which include: (1) the dissemination of knowledge, (2) the extension of the frontiers of knowledge, and (3) the performance of demonstration and other services. To perform these missions they must engage in intellectual and physical endeavors that include, among other activities, guided and individual experimentation.

While many of the learning experiences use well-known procedures and are easily controlled, the emphasis on innovation and personal development, particularly at the graduate level, motivates use of highly sophisticated equipment, frequently independently, in the learning process. The risks are obvious, as are the needs for balanced training and supervision of the persons who use the equipment. The rapid development of social research and experimentation or demonstration *in vivo* have created a new area of work with a new spectrum of risks. The broadened responsibilities of the institutions are apparent. Scientific and technological development, spawned by World War II and continuously stimulated by burgeoning new industry, has led the educator and his students into a closer relationship with the world of technology; the result is new responsibilities and liabilities for the institution, its staff and its students, and the public.

Traditionally colleges and universities have occupied a preferred place in American society. Until World War II, only about 10 percent of the high school graduates, selected for their intellectual capacities, their ability to pay, and their motivation, attended college. Built around the idea of a community of scholars formed to guide personal development through stimulation of the student, the campus was essentially a sheltered environment and one in which, by virtue of the selection process, problems of property damage and liability were notable by their absence.

The Environment of Higher Education in the 1970's

In the technological world of the 1970's, when more than half of the high school graduates obtain further education, there is a radically different environment in higher education. Moreover, the rapid increase in the numbers trained for professional endeavor has made for a better-informed society and new social attitudes in which the principles of responsibility have assumed rather different proportions. Knowledge has made it easier for man to achieve his goals, it has also made it easier for him to assess and to challenge society's response to his needs.

The traditional community of scholars on a green campus with ivy-covered walls no longer exists. Congested urban and suburban campuses have become common, and isolation of that community from its public has been replaced by "involvement." Services and responsibility for social as well as physical welfare have become the rule, and the university now must consider the will of its neighbors in making its own program and operating policies. The campus has become a public meeting place, its facilities are demanded by all elements of the community, and pressure for program development to serve societal needs rather than to achieve the institution's original purposes is brought to bear from many sources. As programs and policies have changed to adjust to the new milieu, so also has the institutional position.

Unique Organization for Management

By its nature and tradition, higher education has both less structure and a less formal managerial structure than many other enterprises, public or private. The idea of a community of scholars and the principle of academic freedom, for example, militate against highly organized reporting and control systems. The combination of curricula in cross-disciplinary programs makes for coalition of unlike groups with a common goal, but very different operating objectives. The result is an organization with long and loose lines of responsibility. Each department, in effect, seeks to promote its autonomy within the system and to operate independently of all but the broadest controls. Even in the administrative structure, the autonomy of schools within a university and the separation of academic and business functions at the highest level further dilute the ability to produce and operate under unified policies and procedures. Because of the lack of administrative focus, the integration of business constraints with academic policy becomes difficult unless a real effort is made and unless strong support is provided by the governing board or the public control agency.

Special Risks

Educational programs today require concentrations of highly valuable technical equipment in instructional and research departments. As a result the institution is subjected to both a broader spectrum and a higher concentration of risk than are found in most enterprises. A severe problem is posed by equipment built in the laboratory, which may not have been adequately tested or protected. Such equipment is unique, its real value unknown. Use by staff, students, and public creates both property and liability risks.

The present social environment, in which militants and social activists single out the college or university as a special target, has created unique public risks for higher education. These must be anticipated and managed if the institution is to guard against financial losses due to damaged property and injuries to third parties not directly involved in the process.

Other problems are raised by the fact that, as the principal sources of training for professional skills, colleges and universities have become responsible for the conduct of the practicum, in which students in training for professional fields undertake a period of field work under the supervision of a practitioner. In effect, the institution and the supervisor of the trainee become responsible for his development and directly responsible to others for his acts, or their absence, as he learns by doing. The risks in this area, which are legion are found in no other enterprise or training system. The very heart of the educational program, involving staff and student as parts of the educative process, is its unique adaptation to experimentation that creates a high degree of risk. The present public attitude toward institutions increases the risk, so that the institution must make special adjustments if it is to survive

For much of their history, educational institutions in the United States have been granted constitutional, statutory, or case-law immunity for liabilities incurred in normal operations, on the ground that they were either instrumentalities of the state, and hence above challenge by virtue of sovereignty, or charitable institutions performing service for the social good, presumably without adequate income or compensation to provide for assuming such risks. Further, in the environment characteristic of early American academic history, the professional was thought to be above the exercise of his skills for personal gain or in a manner prejudicial to the interests of his students or patients, or both. Since the 1950's, however, this position has been eroded by legislative and judicial action: in a steadily increasing number of jurisdictions, either by statute or by judicial precedent, the protected position of the institutions has been modified with respect to liability, first in its responsibility for property maintenance to prevent bodily injury and property damage, and later in its responsibility for those aspects of its programs which could give rise to personal injury through damage to such intangibles as reputation, personal privacy, or professional skill.

During the same period actions for malpractice multiplied, and a set of principles governing the determination of individual responsibility to third parties began to evolve Since World War II, actions that had previously been allowed only in cases of gross negligence were applied in judgmental situations in which the issue was the patient's evaluation of the treatment. Increasingly, judges and juries have been holding the physician, teacher, or researcher responsible for financial damages resulting from his actions, or their absence, not only for bodily injury but for such personal intangibles as loss of earning power, damage to reputation, deprivation of privacy, and the like.

These principles have now been extended to an increasing number of professional disciplines, in effect applying the legal doctrine of the "prudent man," or other doctrines involving information and consent, to a wide variety of personal services. The application to experimental procedures in psychology, vocational guidance, and speech and hearing therapy is easy to

understand Currently, however, the principle has been extended to many professional areas, including economics, sociology and physical education These risks are peculiarly associated with higher education, which depends on a community of scholars representing the principal professional disciplines, and whose normal activities involve both teaching and practice in an agency or institutional setting

Because the staff of the university performs these professional functions, by implication if not explicitly, under the direction of the institution, financial responsibility for a staff member's acts, or their absence, may be imputed to the institution as well as to the individual Clearly, therefore, the college or university must take steps to protect its interests with respect to such liabilities, both by assuring itself that all appropriate steps are taken to minimize exposure and by insuring whatever risk remains Risk management in this situation requires appropriate personnel selection procedures, clear-cut directions as to activities to be undertaken, and appropriate public information on programs, including detailed projections of possible outcomes A realistic assessment of potential risks and the development of procedures and financial programming to provide for them are essential

Present Developments

Since the chances of loss were relatively remote, the risk management function in colleges and universities was in the past relegated to a clerical functionary in the business organization, or was passed over to an agent or broker who was either an alumnus or had some other special relationship to the university and its program. Costs of insurance were relatively minor, often amounting to 0 2 percent, or less, of the total operating budget As a consequence, little attention was given to the details of risk management and to the handling of insurance.

As the complexity of our society has increased since World War II, as colleges and universities have increased in number and size, and as the cost of sophisticated equipment to support programs has multiplied, the pattern of operations has also become more complex Moreover, in the new social milieu of the 1960's and 1970's, in which action-oriented groups seeking to attain their own ends have arisen, the perils, exposures, and risks to an institution such as a college or university have been significantly increased. Rising losses and the consequent rising costs of rebuilding or repairing, and of insurance, drew attention to the area of risk management and insurance. Further, as the news media highlighted the probabilities of loss in the new environment, insurers began to reconsider their involvement with colleges and universities and to compare their new estimates of risk costs with the premiums

Higher education is today a big business. Annual expenditures approximate $25 billion and enrollments are in excess of 8,000,000 students There are more than 2,600 post-high school institutions with physical plants having

replacement values in excess of $100 billion. As the numbers attending institutions of higher education have increased, both the capital requirements and the operating costs of programs have necessarily risen. Although the implications of this fact need no elaboration, it should be pointed out that continuing stress on educational quality, low faculty-student ratios, and the provision of costly facilities and highly sophisticated technical equipment have complicated the financial problems.

Within the past two decades, to meet the problem of rising demands for participation and rising costs per student in education, public higher education has emerged as one likely means of attaining society's educational goals. As education for the masses has grown and the public attitude toward the public institution has changed, free use of facilities and their availability to all have created new problems of risk that are not directly related to the programs.

The values at risk have been magnified not only by the increase in size and by the steady course of inflation, but because of the much broader exposure to students of all types and to the public. The new social attitudes toward individual and public responsibilities and liability have created a new area of risk, one to which higher education and those engaged in its pursuit were largely immune until 1957. Tort liability cases and the settlements of claims for both alleged bodily injury (physical injury to person) and personal injury (injury to personality, reputation, and other intangibles) have grown out of all proportion. One measure of the magnitude of this change is the rise in the net costs of property insurance, which in the 1930's amounted to less than 0.1 percent of institutional budget for fairly broad coverage, as compared with 0.3 percent to 0.5 percent today. Liability covers, if complete and adequately valued, would now cost the average institution, if covered, about 0.5 percent of budget, in some cases the cost has risen to as much as 1.5 percent. For an institution that operates a hospital or medical school, the figure may be even higher.

Since the 1930's staff benefit programs have been introduced and spread throughout the system, and the costs have risen steadily. While in the early 1930's a university might have spent 1.0 percent of its budget in providing workmen's compensation, pensions, and whatever other benefits were made available, it is not uncommon for an institution today to spend as much as 16 percent of its salaries and wages to provide social security, workmen's compensation, unemployment insurance, a pension plan, health insurance, and assorted other insured fringe benefits. Among the larger institutions, the figure approaches 20 percent. If the salary and wage budget approximates 50 percent of the total budget of the institution, 10 to 13 percent of the total budget is devoted to fringe benefits and insurance.

Student unrest, the changing moral standards of society, and the rapidly rising incidence of mysterious disappearance and theft have forced colleges and universities to develop security systems that in many cases involve as

much as 5 percent of budget. Similarly, plant expenditures for risk-reducing devices aimed at lowering costs of insurance and reducing hazards for staff and students, often account for as much as another 2 percent of budget. Thus it is not unusual today for a university to spend as much as 25 percent of its total budget on managing the risks to which it is exposed, including the purchase of insurance and fringe benefits.

Because of the magnitude of the values at risk and the proportion of its total resources at stake, institutional management has no alternative but to give its attention to selecting the best possible routes for maximizing resources and minimizing risks. In a day when the public institution operates in a fish bowl and governing boards are regarded as responsible policy makers with personal liability for their acts, or their failure to act, they have no choice but to consider the problem in all its aspects and to insist on operating policies that will attain their objective - the provision of education of high quality while preserving university resources.

RISK MANAGEMENT AND HIGHER EDUCATION

Many institutions have given little or no attention to the general problem of risk management for a number of reasons. First, educational property is generally tax exempt. Current value data thus was unnecessary. Development of data currently is motivated primarily for purposes of financial management, such as planning for credit, rather than for insurance.

Second, a new spectrum of risks has emerged in the area of liability. Largely immune from charges by statute, as well as by virtue of their social role and the attitude of the public, most institutions provided little more than token coverage for bodily injury and property damage before the 1950's. With the removal of the statutory exemptions and establishment of judicial precedent, some sought coverage of the conventional risks, while others ignored the change. Since 1957, however, the scope of the liabilities to which institutions are subject has steadily grown as precedents have been set in claims actions. Although some states and private institutions still claim immunity for public (and private) education and its agents, their position has been so eroded by statute and by actions in the federal courts that few can assume they are completely immune with any measure of security.

The early claims for bodily injury and property damage usually arose from campus incidents or staff performance. The category was soon broadened to include personal injury resulting from actions taken in institutional programs, and the scope of the risks has grown geometrically since that time. Institutions now find themselves charged with liability for actions, or lack of them, by students or students' parents, spouses or children, by staff members, and by the public, charges range from invasion of privacy and slander to injury arising out of professional judgments in programs. Other examples include discrimination, misuse of assets, malpractice, and false arrest.

Even further, when its students engage in internships as a part of their training, the institution assumes responsibility not only for the patient or student, but to the student-intern and the institution in which the student serves. Practice teaching, legal aid, medical practice, and psychological testing are but a few of the activities that are subject to such liability. A university staff member may also be subject personally, as well as institutionally, to these hazards. Hence, adequate protection in the form of insurance and careful program planning and staff training is essential. The need for technical guidance to provide adequate coverage has multiplied, and its utilization has become a matter of personal responsibility for those charged with authority in this area.

Regardless of whether or not these actions result in judgments and financial settlements, a defense must be mounted in each case. The institution must pay for investigation, the development of a position, including counter-charges, and the time of staff and counsel both in preparation and in trial. Despite the fact that both public and private counsel contend that many of the actions will not be upheld, the defense is costly.

The job of management in the college or university is to marshal resources and to use them effectively in an innovative, well-rounded, and accredited educational program. Management is responsible for the preservation of the institution's assets and income; this includes the management of risks that could destroy or deplete them. Risk management is therefore a primary responsibility of university management, and the acceptance of responsibility for recognizing, identifying, and controlling exposures to loss by injury is a vital part of the operation. It must therefore be a cardinal principle of management at all levels that risks be identified, hazards be evaluated, and appropriate decisions with respect to their management be made so as to preserve the university's resources. At the same time, the risk manager must be aware of institutional and social policy so that actions taken by the institution will not become barriers to the attainment of either institutional or societal objectives.

The Business Officer's Responsibility for Risk

Responsibility for risk management lies primarily with the chief business officer of the institution. Because his responsibility is administrative at the policy level, he has a special obligation. It is he who must communicate the need for a clear policy statement and a university policy and financial position to the president of the institution and to the governing board, and most particularly to that committee or segment of the board charged with the responsibility for review of business policy and management matters. Unless the board committee and the principal administrative officers of the institution understand the problem of risk management, and effectively communicate the gravity of potential losses to their staffs, the administrative process may well neglect or ignore them until it is too late.

[illegible] policy officer should review the institution's personal and [illegible] risk in his area with his staff, the risk manager, and counsel. [illegible] and manuals are often useful tools, and an outside consultant [illegible] with the specialty risks may be engaged to assure that the problem [illegible] be recognized and evaluated. The first task is to identify perils, the second is to evaluate the exposures and to decide on the appropriate [illegible] for dealing with them. The risk manager, and others equipped to perform these functions should participate in all planning.

Regents or Trustees and Policy

One of the key points to be emphasized in the organization for [illegible] is the role of the trustees or regents in the establishment of a [illegible] institutional policy of risk management and insurance. Since final responsibility for the organization of the institutional program and general [illegible] of its operations rests with the governing board, each member must [illegible] assume responsibility for evaluating them. Moreover, because current [illegible] attitudes toward the operation of institutions assume such responsibility and [illegible] its implementation by a variety of criteria, the trustee or regent must examine the policies and operations of the institution with a view [illegible] various publics. Failure to exercise prudence may create an [illegible] for action for personal injury or for [illegible] and omissions, by a fellow [illegible] or recent staff member, student, or a member of the public who may [illegible] challenge his or the institution's position.

The roles and responsibilities of trustees and regents may to some [illegible] be limited by statute and by charter, but any such limitation, if it is [illegible] weakens the basis for governing the institution. Moreover, unless the [illegible] on the responsibility of trustees is communicated to the public, the [illegible] does not preclude the possibility of legal action against himself or the [illegible]. Clearly he acts in behalf of the various supporting publics in [illegible] the direction of development of the public corporation. By statute [illegible] charter his role is defined and his responsibilities toward the public he [illegible] are set forth. To fulfill these responsibilities requires exercise of prudent judgements in the establishment of the guidelines under which the institution operates.

Clear evidence of the involvement of the governing board is the first step toward a sound risk management program. The second step is the [illegible] of a policy statement that expresses the philosophy of the board and calls for reassessment of related policies. Periodic reassessment of all policy in the light of risk management guidelines, and reaffirmation of the risk management criteria as fundamental to other policy, are essential. Placing the institution's managerial policy on record with each public it serves is a sound first line of defense for the trustees, as well as a means of assuring [illegible] of its policies.

The appropriate institutional administrators must periodically review all programs and policies with a view to correcting inconsistencies and introducing necessary modifications. It may be necessary, for example, to examine the facilities being used in institutional programs to insure that safe and secure facilities are provided for complex equipment that requires particular protection, and to arrange for joint responsibility with students and staff for programs such as the practicum. Policy must reflect a consistent operating philosophy, and the relevant financial, legal, and physical program parameters should be tested regularly against the basic institutional position. This is the job of administration; governing board examination of programs and policies in this light is the key to sound operation.

Recognition that risk management policy is basic to all operating policies and that all should reflect those considerations is vital to the security of all parties. Financial risks alone justify such analysis, but when personal security considerations are taken into account the urgency is overwhelming.

The Large University

In the large university, the risk management and insurance functions may be divided or they may be consolidated under a policy administrator responsible for the entire area. For best results, the functions should at least be organized under the coordination of an individual reporting to the financial vice president, business manager, treasurer, or controller. Although there is logic to any such arrangement, the important element is an arrangement of people performing related functions in such a way as to maximize efficiency in information exchange and policy administration as well as in program implementation. Because a significant part of the workload consists of financial management and planning for both property and personnel operations, the function probably should be located in the office of the financial vice president. However, an equally good case can be made for associating the operation with the treasurer's office, along with the responsibility for preservation of assets, handling of employee benefits, and the personnel function.

Although the staff of the office will vary with the size of the institution, it must include a mix of skills appropriate to the administration of a variety of activities: knowledge of, or the ability to obtain pertinent counsel on, fire and building codes; state and federal safety standards, construction and construction problems, liability law and court precedent, and, fringe benefit plans, procedures, and law. Most important, the personnel must be fully familiar with the university's programs, facilities, policies, and regulations, so that the office can act to assure conformity and consistency

The Smaller Institution

In the smaller institution, the chief business officer or the controller, or the two in combination, will serve as the risk and insurance manager. Since

both officers have many additional functions to perform, neither will be able to develop a high degree of expertise in the area; the institution must thus rely on other persons both within and outside the institution for assistance. Academic officers will, in the end, have responsibility for judging the safety, credibility, and validity of programs and for so administering them as to minimize risks, reporting all unavoidable exposures for special evaluation. Plant and other line-function officers will assume responsibility for the safety and security of facilities and physical operations. Both academic and plant officers must thus develop a greater loss prevention expertise than is required in the larger institution, where the effort and its direction may be consolidated in the hands of a team of experts with both policy and operating responsibilities.

Staff Education and Involvement

In all cases, the entire staff of the institution must understand the significance of, and be convinced of the need for, involvement in risk management. The risk manager, whoever he may be, has responsibility for assuring that the staff understands the problems and the realities, and that members devote the time and effort necessary to be effective. In addition, such outside technical personnel as insurance and financial consultants, architects, and safety inspection personnel have a role to play in delineating and evaluating risks and in assessing the probabilities of loss. The insurance consultant, the university counsel, agents, brokers, and insurance company management personnel can also provide useful information on the insurance market environment and the scope of insurance as well as technical analysis to assure that coverages meet the requirements and that the market has been correctly assessed in the purchase of policies.

Risk management and insurance require the development of innovative approaches to security that include, but are not limited to, insurance. Although it must not be forgotten that the fundamental purpose of the institution is to provide higher education and not to avoid risk, appropriate management programs, by reducing loss potential and insurance costs, may make more resources available for education.

In the last analysis, risk and insurance managers should have responsibility for recommending the coverages to be obtained and for evaluating the adequacy of the coverages in any given substantive and technical situation; the cost of achieving the policy position recommended by the manager must be evaluated and approved by administrators and the governing board. For example, students in a practicum might be required to share the risk created by the practicum, or even to hold the university harmless—the more obvious solution from a financial point of view. But such a policy is likely to cause many students to withdraw from the program. Since this would defeat the purposes both of the institution and of society in creating the program, it would not be a reasonable solution. The problem of managing risk thus

becomes one of balancing policy and financial issues in the light of institutional and public objectives. The fundamental purpose is to preserve the institution's assets while building both its resources and the quality of its programs. At the same time, the underlying purposes of the institution and the society which supports it must also be considered. Risk management must use techniques of implementation that consider risks and exposures and manage them in a way that is consistent with overall objectives.

II

Risks Peculiar to Higher Education

Colleges and universities are subject to all of the usual property and liability risks to which other enterprises are exposed, including risks of property loss from such physical perils as fire, explosion, water, storm, and lightning. As a consequence of these losses, they are also subject to risks of loss of income resulting from the interruption of programs, or the possibilities of increased costs resulting from the use of substitute facilities and expediting expenses to secure rapid restoration of damaged facilities.

In recent years, with the gradual loss of the protection of statutory or sovereign immunity, the financial responsibility of institutions to third parties injured as a consequence of use of the institution's facilities or by involvement in its programs has become significant. Such responsibilities include the ordinary risks of loss due to bodily injury and property damage but more important are the myriad risks of personal injury losses that result from damage to third parties, the damage is usually to intangible personal elements, measured as losses of future income, injury to reputation, or other personal damage, all established by tort action in the courts.

Since early in this century, colleges and universities have had to provide, as do other organizations, workmen's compensation insurance to cover losses due to job-connected injuries to employees. More recently, the passage of the federal Occupational Safety and Health Act has strengthened these requirements and imposed even greater liabilities on institutions as operators of physical facilities and providers of employment.

Colleges and universities also were given the option to elect, and most have elected, to be subject to the requirements of the social insurance (social security) programs such as old age and survivors and disability insurance. All are now subject to unemployment insurance requirements. For all practical purposes, the social coverages they provide are equivalent to those provided by industry.

The present social environment in which militants and social activists single out colleges and universities as special targets creates special risks which must be anticipated and managed. Among these are the possibility of damage to high-value scientific equipment used by participants in the educational process in facilities built for public occupancy, as well as an assortment of personal injury liability risks, including those created by programs, the practicum or research, and risks of actions for professional judgment or malpractice. A few of the exposures peculiar to higher education will be introduced briefly. Later, both the management techniques to be used in handling them and the kinds of insurance that assist in meeting the financial responsibilities will also be detailed.

HIGH-VALUE EQUIPMENT AND PROGRAMS

Extremely high concentrations of value are found in equipment that is commonplace in instructional and research departments on college campuses. Now that electron microscopes and computers, for example, are regarded as essential from a program viewpoint, equipment worth $150,000 or more is frequently concentrated in areas the size of an ordinary classroom. Such equipment is often highly sensitive, requiring environmental controls to protect it, and its proper location is vital. To place it in ivy-covered towers, improperly safeguarded and controlled, or in buildings that are not equipped with proper facilities for resisting fire or other environmental hazards, is to subject the institution to a risk of enormous financial loss. Such equipment should be installed in facilities designed to minimize the probabilities of loss and thus to reduce security and insurance costs to the minimum.

To complicate the situation even more, the philosophy of "hands-on" training espoused by many institutions has led to extensive use of the facilities in teaching. The equipment is thus subjected to considerable variations in environment, as well as to considerable chance of damage from mishandling by persons not fully trained in its use. Appropriate training, facility engineering, and continuous supervision are essential.

Because of the large investment, the high expense of maintenance and operation, and the great potential for management use, computers are frequently used by the university for the storage and handling of institutional information as well as in the training process. Such a combination creates a high potential for damage to the equipment and to the information committed to it. Inadvertent error on the part of a student or staff member may create the chance of loss of programs or information that might significantly damage institutional operations, and introduces the possibility of invasion of privacy through inadvertent or deliberate examination of personal file information.

Finally, because of its significance to both programs and administration, the computer has been a target of social militants, with the result that security measures are required in many institutions.

The risks associated with property use and the risks of destruction of property or programs are both more numerous and of greater magnitude than would be the case were the university a normal industrial user of scientific equipment. The institution's response is to be aware of that fact and to organize both programs and facilities to respond to it, while providing both direct-loss and third-party insurance to cover its financial responsibilities.

LIABILITY RISKS AND FINANCIAL RESPONSIBILITY

It has been pointed out that higher education, both public and private, has been immune to charges of liability during most of its history in the United States. Public institutions were, and some still are, immune as agents of a sovereign state. Private educational, scientific, and other eleemosynary institutions have been granted statutory immunity by both state and national governments. But with the changes of public attitude in the postwar environment, the courts and Congress have eroded these positions, with the result that institutions now claim immunity only in some jurisdictions, even as agents of the state.

A typical result of the changing attitude is the increased vulnerability of the professional to charges of personal injury resulting from practice or failures of professional judgment. Both individually and collectively, professors, doctors, lawyers, and psychologists have been held to be legally responsible for their actions in the classroom or through the institution in educational or research practice, as well as in their individual practices. Since these professionals are considered to be acting as its agents, the institution becomes responsible for their actions individually and collectively. Liability may run the gamut from bodily injury in an experiment in the laboratory to personal injury as a result of the misuse of personal information, psychological malpractice, or even slander. Charges of discrimination, misrepresentation, and malpractice may also be brought against those acting in either professional or administrative roles.

As liability actions have come to apply to higher education, and as their scope has been broadened in public practice, the positions of the institution and its staff have become increasingly precarious. Students, their parents, children and spouses, the general public, and even the staff members, professional or otherwise, are increasingly in a position to hold the institution and its agents responsible in a wide variety of contexts that are unique to education. It is therefore incumbent on the institution to take every possible step to build a secure environment while educating its staff and the students to act "prudently" at all times in dealing with others in the institution's activities. In addition, it will undoubtedly wish to insure any residual, whether or not the jurisdiction is one of those in which the doctrine of immunity still exists, since cases are being initiated with increasing frequency, and they must be defended.

Risk management thus includes appropriate personnel selection procedures, clear-cut directions as to activities to be undertaken, and appropriate public information on programs, including description of their possible results. Appropriate insurance coverage will both provide for defense when an incident occurs and pay any judgments within the limits of coverage. Just as hospitals developed explicit procedures for personnel training and case work, the universities must evolve procedures for use in those professional disciplines in which there is a significant potential of actions for professional malpractice.

Such risks are peculiar to higher education; since most of them are inherent in the educational process, they cannot be avoided. The facts must be recognized and procedures developed to deal with them, including financial programming to meet the risk. Some examples of the risks in this area follow.

The Practicum

Large-scale programs offering a practicum, or practice in the profession for which one is in training, are conducted by many institutions, particularly colleges of education, medicine, dentistry, and, to a lesser extent, law, social work, and the like. In fields in which individual experience is a requirement for certification, the institution that offers training is responsible for providing both a place to learn and guidance in practice. The institution also assumes partial (or total in many cases) responsibility for the internship both to the agency and to the public it serves.

Among the liabilities created by the practicum, the first is to the student himself. Obviously, there is some chance of incidents that may damage the student, his person, or his reputation. Information concerning the whole environment and the specific situation in which he is to work, including some appraisal of his chances of personal injury, must be provided him in advance. Failure to do so and to exercise appropriate controls through the supervising agency and its staff can result in charges of improper program administration and may establish a cause of potential action for negligence. Recognition of the risks by all parties to the process is essential, both to minimize the chance of loss and to limit recourse.

The institution may also be responsible to the intermediary agency, and to the public served in the program, for injury arising from the practicum. Injury may occur to the student in the practicum, his supervisor, the client, or the institution providing the service. Personal injury to client or patient may take the form of physical damage, corporal punishment, bodily injury through accident, or personal injury through treatment, which would imply malpractice or other professional liability, or the alleged injury may affect the reputation of the person by invasion of privacy, or personal conditioning. Except for actual physical injury, accidental or in treatment, the injuries and the resultant claims are normally based on intangibles and will derive from

the program function of the institution, they must be adjudicated by a court unless the institution admits liability.

Unless appropriate contractual arrangements are made among the institution, the agency, the student, and the individual treated, and all prudent actions designed to preclude accident or injury are taken, the possible liabilities are almost limitless. Such risks, however, are inherent in program and are peculiar to higher education.

Discrimination

Most colleges and universities must limit attendance, and most seek to achieve a homogeneous student body in the process. Although the student selection criteria are by definition free from bias, it is vital that they be explained and documented to the public. Where deviations are planned, the rules governing them and their purpose must be made public in a clear and consistent statement, and they must be legally defensible.

The selection process must be free of discrimination except in such objective terms as the chronology of receipt of applications, high school records, entrance examinations, substantial background, intelligence ratings, and financial capability. Use of quotas by race, age, sex, or other personal distinctions constitutes illegal discrimination and may be subject to criminal as well as civil charges.

The risks of discrimination, however, extend considerably beyond the admission process. In many institutions, departments are given responsibility for the selection and counseling of students whose major subject is taught by the department, and for the awarding of fellowships and scholarships to support their work. Institutional and departmental program policy must be coordinated, and the evidence of treatment in both cases must be sufficiently clear as to preclude supportable charges of illegal discrimination. In programs designed to discriminate experimentally, to overcome background limitations, for example, administrators must be aware that charges of reverse discrimination may be brought. The institution should be prepared to explain its posture and should publicly announce and document its program position.

Charges of discrimination and resultant personal injury may also arise from employment policy and practices. Action in this area, however, is a matter of legal definition, which is itself subject to judicial review. Since such discrimination in employment, unless unintentional, would be illegal, such a charge by an employee, if maintained, normally would not be defended by an insurer, or be insurable. On the other hand, since many charges will not be upheld, the insurer can agree to provide defense in such actions, pending a finding. Defense can be so time-consuming and expensive that it is worthwhile to provide such coverage.

Because criteria of selection are subjective, the area is difficult to define, and charges and counter-charges may be expected, but if the institution's policies are in order and consistent with public law and policy,

and if its actions accord with them, the position is at least defensible. Legal, academic, and insurance counsel should thus be involved in making such policy and assuring its observance at all levels.

Personal Achievement

Personal injury also may be alleged by a student who, for whatever reason, has been unable to achieve his goals although the university has asserted that its course of study will prepare him for a particular career. Personal injury suits have been filed by students who have failed C.P.A. examinations or have failed to secure entrance to medical schools on the basis of their records. Although it is difficult to find any real basis for such legal actions, the fact remains that they were filed; depending upon the special circumstances, there may be a potential for financial damage against the departments, their staff members, and the institution. Provision through insurance for investigation and defense is obviously justified.

Research Risks

Research undertaken by staff and students may involve human and animal subjects. Wherever human subjects are involved, consent by the subject, based on full disclosure of the experiment, including the extent of the potential for injury, is necessary. Further, it should be made clear to the researchers that compensation to those participating in the experiment is no bar to liability. While the consideration may provide a defense, unless adequate information has been provided and informed consent obtained, the liabilities and the potential for loss remain. Adequate provision for liability in this area is essential.

The Department of Health, Education, and Welfare has established a number of requirements, including institutional committee review, for experimental or research programs supported by that agency that use human subjects. Among other conditions, the institution must agree to provide facilities and professional attention to those injured in such processes. To agree to such condition without a liability finding would appear to concede liability, thus destroying a possible defense in any subsequent civil action. An appropriate tort action to establish liability and insurance of the risk would seem to be an effective means of meeting the problem, not only in federally supported programs, but generally.

Another kind of risk, that arises f . research is infringement of copyright and invasion of privacy or personal privilege by members of the staff or students under institutional direction. The staff must be informed of the potentials in this area and of the legal requirements and standards of program design, institutional supervision and service that must be met to avoid chances of legal responsibility.

A number of the same legal liabilities may also attach to performance of academic functions under grant or contract with various outside agencies,

including the government. The institution must thus establish by policy its contractual relationships with its employees, including individual and institutional rights and responsibilities. It should also, as a matter of policy, clarify any restrictions on employment or performance, including rights of ownership in ideas developed in the area of employee competence. It should also seek by contract to establish the relative rights and responsibilities of all parties in developments that result from the work of third parties, patents and copyrights, all the derived responsibilities of malpractice, invasion of privacy, privilege, and the like. Because the interests of the university and of staff members may be questioned by a third party, the policy and contracts under which they work must be public and binding, as well as justifiable.

When large contracts are involved, coverage for errors and omissions may also be appropriate to protect the broad supervisory responsibility of the institution, which is frequently overlooked by the financial and research administration officer. This responsibility may of course be avoided by limiting the contract or grant instruments appropriately before accepting them.

SOCIAL RISKS

These comments on the risks peculiar to higher education have briefly mentioned the social environment of the past decade, when institutions in general, and colleges and universities in particular, have become the "establishment" targets of the militant social activists, both students and non-students. The problems in this area range from deliberate damage, or vandalism, to accidental damage resulting from the actions of an emotionally overwrought society seeking to express itself in new and different ways.

The institution has a responsibility to its students, to their families, and to the public to offer a reasonably safe place in which to study and to provide information about social developments on the campus, on the basis of which students may evaluate the benefits and hazards of participation. Clearly, an administrator of a higher educational institution, facing a "movement" situation, must be able to anticipate action and to prepare participants and staff alike for dealing with it. He must also be prepared to accept responsibility for damage to third parties, as well as to the institution itself, if his program for security or the information disseminated as the basis for actions by others is incorrect or inadequate. Managing the risk is the first defense; insuring the residual completes the prudent course.

Another aspect of the problem is found in community relations. Expansion of campus property through the exercise of eminent domain, or the refusal to permit community use of educational facilities, may have given rise to disputes between the institution and its neighbors. Differences of opinion among students, staff, trustees, and the public may complicate the problem. Appropriate planning and communication with the public is vital to the maintenance of the institutional posture. In the area of social relations

and institutional policy, the risks of loss to property and person are enormous. Wisdom requires that every possible step be taken to minimize the points of confrontation and, hence, problems of securing adequate insurance to cover both the property and liability risks. In order to minimize costs of insurance, as well as security, careful developmental thinking and planning of organization and program are required. Such steps as the organization of the students and staff to provide communication with the community are a small price to pay for assuring reasonable security.

III

Discovering and Evaluating Risks and Exposures

To manage risks effectively one must identify them and have reasonable knowledge of their potential. Higher education faces all of the normal, obvious risks which are associated with the operation of institutional property, as well as liability risks that arise from property operations and the assembly of people. But there are many hazards besides the obvious ones, as the preceding chapter suggested.

Even in the obvious areas understanding and technical knowledge are necessary so that security measures may be taken to reduce risk and so that an insurance program that will cover adequately any non-transferable or remaining risk can be established. A survey of college and university business officers made in 1970 suggested that neither the values assumed to be at risk nor the program coverages were appropriate to the conditions. There were many uncovered perils; deductibles were too low or non-existent; and the values used for insurance had been developed for credit or other financial purposes, not as a basis for buying insurance. There is an obvious need for higher education not only to identify and evaluate unusual exposures, but also to understand and apply the principles of risk management and insurance to the more obvious or conventional risks. This chapter will address both problems.

TECHNIQUES FOR DISCOVERING RISKS AND EXPOSURES

Higher education is, and should be, concerned with the risks inherent in the provision of education, training, or research opportunities and the associated uses of property, including equipment. One of the hazards arises from non-standard or individually developed equipment fashioned by the professor or researcher for his teaching or research. Such equipment offers neither the safety features of standard scientific apparatus nor records of experience to predict its performance. One can only speculate concerning the

risk potential associated with its development and use. Moreover, the university risk manager has no way of knowing about all the developments of this type that take place in the many laboratories, classrooms, and offices on campus.

In the area of human risks, the risk manager faces similar problems. He and the insurance underwriters are aware of the exposure typically associated with organized "people" programs. But they cannot be aware of new ideas and interpretations that may arise from particular educational or research processes. What risk manager can know about new conditioning techniques that are still in the minds of the psychologists or the experimental treatment programs to be designed to perfect and implement those techniques? The range of possible results from such experimentation is practically unlimited, a technique that may be highly successful with an individual suffering a particular mental, nervous, or physical condition may do irreparable damage to the capacities or personality of another.

It is also conceivable that a researcher, having developed a particular instrument or experimental procedure, may show it to others who may also wish to experiment with it, offering their results and suggestions as partial compensation for permission to use the equipment. Here again, the potential risks of injury and liability are considerable. Damage to person and facilities that results from improper or chance use of the equipment might have been avoided by appropriate safeguards, including instruction.

How does the risk manager become aware of these developments and evaluate their potentials? There is no technique by which he can be assured that such information, together with the developer's appraisal of the potential risk, will be transmitted to a central location for distribution to those who must arrange for the necessary precautions. There are, however, several techniques that may assist him in identifying areas of exposure and arranging for periodic review of activities to identify new hazards and evaluate the associated risks.

Development and Use of a Policy Statement

Chapter 1 suggested the significance of an institutional policy with respect to risk management as well as the importance of the involvement of the governing board (regents or trustees) in developing and implementing that policy, in coordinating it with the other policies of the institution and in relating it to specific program risks. To achieve this, the first step is to bring the problem of risk management to the attention of the president and the officers of the corporation and to make them aware of the necessity of board participation in this process, providing them with materials to suggest both the extent and scope of the problem and alternative approaches to its administration.

Among the first materials to be developed is a statement of policy concerning risk management and insurance. The draft should be broad in

character and coverage but direct and to the point. It will obviously raise new considerations with respect to present policy and programs; the board should give early and direct attention to this need for accommodation, as a support to the development of program and to assure immediate and thorough staff attention to this area.

Two examples of policy statements, one relatively broad and the other relatively narrow, follow. Both are adaptations of actual statements, with deletion of identifying information.

(1) The administration of the.....University recognizes its role of stewardship over the assets of the University, both human and property. It interprets its responsibility in this area as requiring the highest possible concern for the safety of its students, employees, and the public combined with a concern that the maximum protection be accorded University property to prevent financial loss.

The management of the risks of loss to the University in terms of both human and financial resources shall be the responsibility of the Director of Risk and Insurance. It is his duty to identify risks. He shall then recommend means of eliminating, abating, transferring, or retaining these risks after consultation with the Vice President and Treasurer. Only when it is deemed that the University cannot eliminate or economically retain a risk of loss shall it be transferred by purchase of insurance. The form and sufficiency of limits of liability for casualty protection of the University shall be determined by the Director of Risk and Insurance, again in consultation with the Vice President and Treasurer who shall keep the Board of Governors informed of actions taken.

The University recognizes its ability to budget for and thereby retain limited and predictable risks of financial loss. It shall not be the University's practice to attempt to insure such foreseeable and bearable expenses, if the alternatives can be achieved with due regard to sound business practice. The deductibles on property insurance shall be determined by the Vice President and Treasurer after recommendation from the Director of Risk and Insurance and in recognition of insurance market conditions.

The University administration will continue to purchase insurance with full consideration of the services offered by the insurer, their reliability and financial stability, as well as the price of the insurance coverage as competitively determined. The University does not recognize any other obligation to be satisfied by the selection of any particular insurance underwriters, brokers, or agents.

The University will remain alert to all opportunities for cooperative action with other institutions that promote mutual benefit in handling risks that are not readily insured or safely retained. Any such cooperative activity shall be explored by the Director of Risk and Insurance and reported to the Board of Governors by the Vice President and Treasurer.

(2) The Trustees of.....University recognize their responsibilities to each other and to the public, grantors and other sources of financial support, the employees, the students and their parents to provide an innovative and high quality educational program responsive to the needs of society, while establishing an operating basis, including financial judgments and controls, consistent therewith to assure a secure environment for all program participants. The objectives are to preserve assets and maximize income consistent with program responsibility. To that end, responsibility for initiating and overseeing a risk management and insurance program is assigned to the Committee on Business and Finance of this Board.

Responsibility for the establishment of a risk management and insurance program covering all property and program risks, personal and institutional, related to the performance of the educational, research and service missions of the University is assigned to the (*Financial Vice President*) who shall review all policies and regulations of the University with a view to recommending changes therein consistent with a mature risk management policy. Such modifications as may be necessary to make the program secure and consistent shall be recommended to this Board for adoption by (date) . Thereafter, continuing review of plant and program plans and developments shall be undertaken with a view to assuring complete reporting to this Board prior to adoption of any new or innovative program or policy or changing any basic policy of.....University.

Each member of the staff is charged with responsibility for a review of his own activities to identify plant or personal (including liability) risks and reporting these to the (*Financial Vice President*) who shall have responsibility for initiating appropriate actions.

Conservation of assets and maximization of income consistent with the educational program responsibilities of the University shall be the decision criteria used in determining facilities changes, program modifications, and the like. Final authority for such decisions rests with the (*Financial Vice President*) who shall report them to the President and the Business and Finance Committee of the Board for information and/or for guidance.

When all programs have been redesigned to maximize security consistent with University mission, the remaining risks, together with the probabilities of their occurrence and their impact on assets and income shall be considered and financial provisions, including direct budget, self-insurance or commercial insurance shall be arranged. Direct involvement of the University in the development of specifications for all insurance programs, including preparation of property, equipment and program inventories and experience data on incidents, costs, and recoveries is essential. Although insurance, including fringe benefit programs, normally will be negotiated, comparative bid studies and/or insurance analyses conducted by third-party experts shall be arranged periodically for review with this Board. In principle, the University should deal directly with all carriers, utilizing the services of an agent or

broker only when this is deemed useful to the cause of the University. To the maximum extent consistent with good business operations, the services of such agents and brokers should be contracted for by the University, no commissions or other company compensation on University account being expected.

An annual report on each of the broad risk areas demonstrating planning, program activity and results in program and financial terms shall be developed for submittal to the Business and Finance Committee of this Board annually.

In the absence of specific policy directives, the decisions of the University administrative officials with respect to this policy shall be final, albeit subject to appeal to this Board through the usual channels.

In the interest of providing reasonable security for the trustees and officers of the corporation, broad errors and omissions and general and institutional liability coverages naming Board members, administrative officers, and all employees of the University as additional insureds shall be provided at the expense of the University. The coverages and their limits shall be reviewed periodically with the Business and Finance Committee of this Board.

Staff Education

The most effective step toward identifying risks, and certainly the most useful, is education of the entire staff to the need for information and to the policy of the board. This program includes the entire organization and requires constant attention. The chief immediate concern of the risk manager, with the support of the governing board, is to make the administrative staff aware of the potential loss of income and assets that might result from risks inherent in program operation. Unless the staff is aware of this potential and of the need to take positive preventive action, and has the will to provide strong policy and program support, there is little hope that any program of risk identification will meet with success.

While attention may be gained and education provided in many ways, each officer will need to find the techniques best adapted to his own situation. Several approaches that may be useful either separately or in combination are described in this chapter. It is often useful, for example, to circulate among board members and administrative officers news items about exposures and losses that have occurred on other campuses and the related damage potentials, as well as information on the costs of security and loss prevention programs and on the rapidly increasing costs of insurance at other institutions. Risk management policies of other institutions may also be compared with the local policy and experience.

Periodic oral and written summaries of actual costs, including losses, protective programs, and insurance, help demonstrate the significance of the risk and insurance problems to the college or university. If information is available to illustrate the effects of security programs on the cost and

availability of insurance and thus on program budgets, the case may be brought home to the individual staff members. The result should be both support at the policy level and cooperation among program and operations personnel.

Group Encounters to Locate Risk

Another step, as well as a means of identifying specific risks, is to organize administrative meetings, informational and brainstorming sessions, in which the risk potential in academic programs as well as in the academic environment can be explained to such administrators as deans and department heads. Such sessions should include discussion of the risks peculiar to the institution's programs in the hope that it will lead to questions about current program operations and examples from the staff's experience. Such sessions and individual disclosures tend to have a domino effect, bringing other examples to the fore. The results make clear the wisdom of managing risks in the open rather than hiding them until it is too late to protect against them.

Dangers of Overemphasis

There are obvious dangers in this approach. Overemphasis of potential liability or responsibility may lead staff members and their students to think in terms of institutional rather than individual responsibility, with the result that insufficient attention is given to loss prevention in program development. Moreover, some suggest that the technique, by stressing consciousness of insurance, will encourage unjustified claims by making the staff aware of the claim potential and the university's insurance position.

This is a calculated risk, the problem of attitude is one that should be emphasized to those who develop personnel policies, in order to encourage employee identification with the institution and its financial well-being. Similarly, students and the public should be made aware of the impact of losses and costs of insurance on total educational costs.[1] A consciousness of safety, prompted by an awareness of the financial and social cost potentials

[1] In one institution in 1970, as a result of a significant pattern of losses in the preceding two years, an increase in premium amounting to approximately $180 per student was quoted by the carrier as the basis for continuing to carry the risk on the stated basis. Presentation of the data to the various institutional publics had a most salutary effect. Parents, alumni, students, and the state government became directly interested in the problems of the institution, and its pattern of losses reflected a significant decrease in the subsequent year. New student governance and community relations procedures were adopted, providing means for airing differences of opinion and influencing policy without violence. As a result, in the succeeding year there was some adjustment of premium rate, but more significant, consideration of the problems led to a rearrangement of the entire insurance program, with assumption of a greater portion of the risk by the institution and with some legal waivers agreed to by all parties. This reduced insurance costs, the new policies reduced losses, and the result was a reduction in risk cost per student.

will both stimulate cooperation in identifying hazards for appropriate action and discourage inappropriate claims actions.

In addition to meetings of academic personnel, some institutions, especially those that have established special administrative control points, have sought to identify risk exposures through reporting of normal programs. For large risks this is an appropriate technique; however, it will not normally result in identification of developmental program risks or specific equipment problems. There is no real substitute for involving those who implement programs in the discussions of the hazards and specific identification of the possibilities.

Learning from Other Universities and Organizations

Information about new exposures particular to higher education may also be gained by contact with other educators and risk administrators. The programs of the University Insurance Managers Association and the National Association of College and University Business Officers provide such exchanges. In addition, the Society for Risk Management, Education Section, the institutional risk management group, and a variety of others report on developing problems that result from innovation in facilities planning and programs, highlighting potential risks.

Higher education publications, various trade journals, and other published materials also may provide a useful checklist for use by the institutional risk manager. For example, the American Management Association has developed checklists that cite perils and hazards as well as appropriate insurance coverages. Any of these may help in identifying and evaluating the problems that might otherwise escape notice.[2]

Involving the Underwriter

A third major technique involves periodic sessions with the university underwriter and visits by its safety engineering teams that make inspection tours to identify specific exposures, a procedure that has the further advantage of familiarizing the underwriting group with the environment and the approaches to risk control on campus. Although underwriting analyses and safety inspections may at first cause some problems, as the insurance company accumulates experience and the university approach is improved by the contact, both the risk management program and the relationship will profit.

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[2] See Bernard John Daenzer, *Fact Finding Techniques in Risk Analysis* (New York: American Management Association, 1970), and Arthur J. Derick, *Risk Analysis Questionnaire* (New York: American Management Association, undated). For further discussion, see below, "Third-Party Aids."

Summary Observations on Risk Discovery

Of greatest significance in the identification of risks is the involvement of the governing board in making policy and insuring its execution. The board committee members whose concern is financial stability and institutional control can supply both guidance in developing a policy and the necessary support to insure that priority is given risk management information and decisions in the institution's activities. This is a powerful asset in securing attention of program officials, donors, and others interested in the university or college.

It also is imperative that the responsible administrative officers at the policy level maintain close liaison with plant and program officers throughout the college or university, circularizing policy statements and urging cooperation in risk management activities at all levels. Similarly, circularization of published materials on losses and the stimulation of feedback on specific developmental activities or controls related to the program are essential. It is important that the university risk management officer involve counsel and the university's underwriters, broker, agent, and home office underwriters, in a continuing analysis of the program of risk management and insurance for the purpose of defining potential exposures and suggesting techniques for dealing with them. Foreknowledge of the problem, the first essential, can be attained only through constant study of the institution and its programs and of the developing literature concerning perils, exposures and issues, including new legal theory and precedents.

TECHNIQUES FOR ANALYZING RISKS AND EXPOSURES

The object of identifying risks and exposures is to define possible losses and potential costs in the context of university income and outgo. The job is then to determine the steps one may take to rearrange the elements of risk so as either to reduce the loss potential or to transfer the risk of financial loss to others, minimizing the potential effects on the financial position of the institution.

Standard sources detail loss prevention and loss minimization techniques in the abstract; these data may be used in conjunction with present cost data to derive concrete applications. If, for example, the installation of fire detection devices is being considered to reduce insurance rates, it is a relatively simple matter to compare the estimated costs of risk minimization potential with the reduction. A decision to cost out the actual results would logically follow if this test comparison produced favorable results.

The intangible loss value of the contents of buildings is a different matter. For a computer installation, including tape libraries and other equipment, the value of physical replacement is relatively minor compared with the cost of restoring the programs, systems, and other data that may be lost. Steps to protect the investment in data and systems would seem to be

the first requisite, insurance of lost time or costs of redevelopment the second. Similar approaches can be developed to other situations. The literature is replete with comparative data that may be used as a basis for such analyses.

Regular comparisons of loss prevention activities and of losses and insurance costs with those of other university or college risk managers may also provide useful guides. The experiences of many institutions may be gathered through regular survey and contact procedures and the summaries used as a guide for program priorities.

Third-Party Aids

Analytical forms, developed by various companies and risk management associations may be used by small or unsophisticated institutions as one means of summarizing data on their own facilities and programs for underwriting purposes. Such forms may also be used to pinpoint specific areas of exposure and provide cost comparisons of alternative methods of risk control, including loss prevention and minimization of insurance.

A number of risk management and insurance consultants who have worked with higher education over the past decade have developed a considerable expertise in spotting particular exposures and risks; they may also be useful in analyzing higher education loss experience, in general, as it relates to a particular institution. A consultant may also suggest innovations in either coverage or program.

In retaining a consultant for university service, one should aim to be sure that he is used effectively. When he is retained for investigation or evaluation, there is no question of his value, but when he is used for normal market contacts, negotiations, and data accumulation, he loses his principal value. In the last analysis, he is an information source, a sharp evaluator, and an effective stimulator for the institution. But since he is not a business officer of the institution, he should not be assigned duties normally and properly performed by them.[3]

The value of employing a consultant, like other risk management techniques, will bear financial analysis. The cost of his use may be compared with the changes in costs and performance subsequent to his service, to appraise the value of his contribution. Such services should be obtained only periodically, unless outside evaluation is required regularly by legislative or trustee actions, and they are justified only if their economic value can be demonstrated.

In appraising risks, particularly new risks in the liability area, one should use the regular data services such as *Personal Injury Newsletter*[4] or the

[3] See Chapters IX and X for the data needed and functions performed by risk managers

[4] Matthew Bender Company, Albany, New York.

F, C & S Bulletins.[5] Among the number of other sources are the *Insurance Counsel Journal*[6] and Blackwell's *College Law Manual: A Looseleaf Service for College and University Administrators and Their Attorneys*[7] The proceedings and minutes of the American Bar Association and its various committees and the proceedings of the Association of Institutional Counsel may also be useful.

Because of the high potential cost of liability actions, state attorneys general, institutional counsel, and the principal administrators should be involved in the analysis of institutional policy with respect to liability. Areas of concern should include professional, personal, and social liabilities, and malpractice, discrimination; invasion of privacy; campus control; and a number of personal injury situations that may arise from research, such as questions of informed consent to human experimentation, all of which require legal and social policy judgments.

To assess the possibilities and to devise a means of providing relative institutional financial security against such hazards is the object; it can be served only if one is abreast of both the developing legal situation and the educational policy requirements. Quite obviously, management in these areas is judgmental, depending basically on an appraisal of institutional policy and program objects, the means of providing protection or reducing risks, and the costs One may also give consideration to the possibilities of securing statutory protection by limiting liability and establishing criteria for compensation. Such political judgments are normally beyond the purview of the risk manager, except that to assure awareness and that a policy position is taken he must stimulate academic, legal, and social dialogue with those charged with making policy for the university.

THE ALTERNATIVES

It is obvious that the techniques of risk discovery and analysis involve evaluative criteria There is no way in which the functions can be completely segregated for treatment independently, rather, the job is to establish university objectives, in the light of which the priorities from a program viewpoint may be clarified. These are then cast in an environmental frame, including the financial data based on cost of risk minimization, risk assumption and/or risk transfer, from which decisions may be made.

The alternatives available to any institution and its policy makers include the following

[5] The National Underwriter Company, *Fire, Casualty and Surety Bulletins*, Cincinnati, Ohio

[6] International Association of Insurance Counsel

[7] T E Blackwell, Santa Monica, California.

(1) *Recognition and assumption of the risk of loss as a cost of doing business*

This approach means that one decides, in effect, that the chances of loss are sufficiently remote or that the costs of potential loss are sufficiently low in relation to institutional income, to warrant ignoring the risk. In some areas, for example, earthquakes are infrequent or nonexistent; if they have occurred, the consequences have been insignificant. One may choose to ignore this risk on the basis of experience. At the same time, one need not avoid consideration of the risk; it may be worthwhile to undertake such programs of risk reduction as use of earthquake-resistant construction and the employment of waiver and consent forms to minimize liability risks. One may also manage uninsured program risks by seeking to reduce them through a public education program designed both to reduce the chances taken and to obtain statutory protection or loss limitations.

(2) *Risk reduction or elimination.*

One may decide to avoid risk by eliminating the peril; this may be achieved by contract, as in a lease transferring all responsibility to the lessor Or the possibilities of loss may be diminished by such risk reduction techniques as the installation of safety equipment and the establishment of a security program. One may decide to rearrange program facilities, placing high value equipment in relatively new fire resistant and security-equipped facilities so as to minimize chances of loss and to reduce potential losses in the event of the occurrence of one of the perils. The effects of such program rearrangement on academic performance must, of course, be evaluated as one of the relative costs so that the restructuring will represent the optimum mix. If the use of waivers and consent forms, for instance, affects the program in a negative way, the objective may have been lost.

(3) *Self-insuring or budgeting for specific risks.*

A particular risk may lend itself to self-insurance or budget procedures. When the probabilities of loss are reasonably low, and the amounts of damage relatively small and of variable frequency, or when a relatively stable amount of loss is incurred from year to year, the institution may decide to establish an average cost base and budget for it annually, or to budget for it over a period of time to accumulate a reserve fund to meet all, or some part of, the expected cost of losses, including charges for such management and claims administration procedures.

(4) *Purchase of commercial insurance.*

The choice, after evaluation of the environment and the loss pattern, may be to purchase insurance to cover potential losses Such a decision is likely when the potential is high and the probabilities are sufficient to warrant financing loss costs. In this event, the institution determines that

partial or total coverage is essential for financial security under the circumstances; from its evaluation of cost and performance, it defines and insures the risks.

When the decision has been made to use insurance, the institution should obtain accurate costs of coverage from several sources, in order to establish comparative cost patterns by type of carrier, by coverage. The language of the policies must be concurrent so that they are comparable. In addition, the behavior of carrier administrative and field personnel should be compared and evaluated.[8]

In addition to examining specific policy provisions to assure that the product meets the need, one should also give consideration to the various program approaches to risk. One should also examine the loss reduction programs of the carrier and make sure that such activities will be undertaken. After purchase of insurance, the market and the services should be reevaluated periodically to assure continuity of an effective and competitive product.

CONCLUDING OBSERVATIONS

Techniques for discovering risks and exposures need to be developed in every institutional situation. Once risks have been identified, the responsible business official must evaluate each from a management standpoint, determining the amounts of engineering and protection which can, or must, be done and the amount of risk to be transferred through insurance. Some of the techniques of loss prevention and risk minimization are developed in the next chapter.

[8] For a discussion of techniques of purchasing insurance, see Chapter IX.

IV

Loss Prevention and Loss Limitation in Higher Education

In the present social environment, with ever-increasing crowding on campuses, the ever-growing sophistication of equipment, the rapidly changing public attitude toward institutional operations—and toward third-party financial responsibility—programs for loss prevention and minimization have assumed a new and extraordinary significance.

To the average university business or financial policy official, loss prevention and loss minimization seem relatively simple concepts. Most have become reasonably familiar with the terms through contact with representatives of their property insurers, and have come to rely largely on plant managers and inspectors, together with representatives of their underwriters, to conduct periodic reviews and to suggest areas of possible loss and remedy in their operations.

Losses due to installation of foreign equipment have in recent years led many institutions to require the Underwriters' Laboratories stamp on equipment as an indication of its safety. Human engineering, conducted particularly by workmen's compensation insurers, the National Safety Council, and others, is designed to minimize or to eliminate accidents on the job and thus to reduce costs New standards of safety are incorporated in the Federal Occupational Safety and Health Act. Concerned with safety and public liability, many institutions are asking plant officials to check sidewalks, staircases, and other property used by the public in an effort to minimize the chances of accidents and of liability actions.

LOSS CONTROL

The objective of the business officer, wearing his risk manager hat, must be first to recognize hazards and exposures and then to examine them from the standpoint of their implications for the financial position of the organization. In effect, in addition to understanding the extent of the

exposure and the probability of incidents that will precipitate loss, he must understand the financial implications of their prevention or control. From the comparison, he must evaluate the position of the institution in the light of its mission and the objectives society has assigned and decide which of the alternative approaches is the most effective.

Once the policy decision is made, however, the risk manager still has many responsibilities to discharge. Having evaluated the risk, its severity, its frequency, and its potential financial and social impacts on the institution, he must determine to what extent the institution is capable of absorbing the risk directly and to what extent it must be transferred. Incident to the decision are others as to the degree to which engineering, either physical or societal, and legislative action might reduce the potential frequency or severity, and the relationship between such expenditures and the out-of-pocket costs of loss or of insurance.

Once he has determined to transfer a portion or all of the risk of financial loss, the risk manager must first select a form of insurance coverage and then the most economic and expedient method of providing it. Each of these decisions is in itself a major one, and each is made in its own environment.

EVALUATING RISK FOR ACTION

Every operating institution maintains a balance sheet, a summary of its assets and liabilities at a certain time. It also prepares an income and expense statement summarizing the financial results of operations for a period of time. All institutions make budgets, or plans for the spending of income, which may be compared with the income and expense statements to evaluate the operating performance of the institution. This is the place to start.

The budget makes provision for maintenance of property. Even if the institution's property values are relatively small, in which case the operating budget would also be small normally, a certain rate of expenditure, based on income, is required to maintain the plant. In most operations, a certain amount, usually a percentage of asset values, is reserved from current income for rehabilitation and/or rebuilding. Similar budgets are made for clean-up, painting, and other normal custodial and maintenance operations. Even in the relatively small college with an annual income of $1 million to $2 million and properties worth $3 million to $10 million, the budget for such charges would amount to between $50,000 and $100,000, which could be designated as maintenance and capital replacement.

One must look at the assets themselves to determine the relative potential of loss from the major physical hazards—fire, lightning, windstorm, or boiler explosion. After an appraisal of the potential frequency and severity of such losses, one should examine the income statement and endowment portfolio to determine the relative capacity of the institution to absorb them in the normal maintenance budget and/or building fund.

In a college or university the loss of some percentage of assets can usually be budgeted as an expense of operations, as part of the maintenance budget with such additions as are required from the plant fund. In such a case, the institution should assume that the only insurance required for property losses would represent the excess over the budget capability, and adjust its insurance program accordingly. A deductible equal to this amount should be established, since there is no purpose in trading dollars with an insurer; to cover losses equal to the deductible would in effect require not only the amount of the losses but administrative expenses amounting to almost as much again.

Sources of Loss

In evaluating risks one should obtain good engineering judgments as to the principal sources of peril and their frequency and severity. The engineering modifications required either to eliminate or to reduce a loss potential should be evaluated as a cost for capitalization and compared with the capitalized costs of insurance charges saved. For example, if relocation of utilities within a facility can significantly reduce the potential of loss either to the facility or to the equipment it contains, one should consider the cost of such relocation as an investment in building rehabilitation to be offset by savings in insurance premiums and maintenance. Similar property insurance evaluations should be made for the entire campus for comparison with the costs of providing physical security and other loss reduction or prevention expenses.

Such analysis assumes that the college or university has an up-to-date inventory of all physical facilities and equipment, by location. A field inventory should be maintained currently, and the replacement as well as book values of all buildings and equipment should be updated annually by appropriate study, or by outside appraisers or engineers. Programs for reevaluation, identification of location, and new inventory input are relatively simple to prepare as a matter of course.

Inventories and Appraisals. For a variety of reasons, colleges and universities have not concentrated on the development of accurate inventories either of facilities or equipment. The results, which have become apparent in a number of contexts in the past several years, include difficulties in making an accurate cost allocation by location and function, in pledging assets as security for credit, and, when loss occurs, in handling insurance. Since each of these areas has assumed significant proportions in financial planning and management, the need for accurate and detailed inventories, together with appropriately engineered valuations, is obvious.

To begin with, an institution needs an accurate listing and description of its fixed or real property, including improvements, and information on both location and function. This record must be more than a simple listing of property by address. It should include, if available, the original costs and

describe adjustments that have affected the life or value of the facility. For credit purposes, current appraisals of the market value of the property should be available, together with such comparative or other developmental data as may be necessary to buttress the evaluation.

For insurance purposes, the present value of the facility based on replacement costs must be known. The figure will require regular updating to reflect both current construction costs and such modifications as installation of air conditioning, environment control rooms, and the like.

A complete list of facilities will produce information that may be used systematically for a number of financial purposes. Since the inventory must be used regularly in facilities accounting and planning, and for financial adjustments in credit and insurance, it requires continuous attention, and adjustments must be made currently so as to reflect the situation accurately at all times. Such adjustments may be made after annual sampling by the study group, or by formula based on current market surveys prepared by government or other sources. If the formula adjustment technique is used, it should be verified periodically by an engineering or appraisal study team, and the technique should be cleared with the financial agencies servicing the university account, including its insurance companies and banks.

The second facet of the inventory includes a listing of all movable equipment, items not permanently fixed or attached to buildings. For convenience, it may classify equipment as scientific, office, and other; it may also be divided by the departments to which the purchase was charged, including all items valued in excess of a specified amount, such as $100, with a separate category for "floating" equipment, non-charged service items that move from facility to facility. Such inventories should be arranged by both administrative unit and by facility, so that an accurate listing of contents can be obtained by department and by facility at any time.

The values of equipment, as of facilities, should reflect historical costs, actions that have affected value, and current replacement costs. For items of high value, such as computers, one may also wish to obtain a market value for credit purposes. As a matter of convenience, it may be wise to list maintenance contracts and other pertinent information, including the source of funds with which the item was purchased. A separate inventory may be kept of property acquired with federal or other third-party funds to which the university has tentative or conditional title and for which it is responsible to enable the institution to maintain proper control, as required.

The major difficulty in the maintenance of the equipment inventory is the regular updating of the file. Although it is relatively simple to write a program to transfer equipment charges from the purchase or receiving notices to inventory, locating it properly in the file, unless the purchasing and receiving notices are modified to reflect the replacement and disposition of the original item, it is nearly impossible to delete items withdrawn from inventory. Perhaps the most accurate and effective technique for property

control in a university environment is the annual departmental inventory, which is prepared and transmitted to departments annually for review and verification of location, changes in value, deletions, and other changes. Periodic sample audits of the department inventories will be necessary to assure the accuracy of the file and the value of the procedure. For purposes of insurance and accountability, central control of the inventory is vital; if transactions between departments and between university and suppliers can be used as source documents to update the file, the job is simplified

The existence of inventory valuation lists for facilities and for mobile and fixed equipment serves a number of purposes in addition to providing basic insurance data Both physical control of equipment and the cycling of purchases are supported, and when utilization data are combined with the inventory optimum utilization of inventory throughout the institution, rather than by department, is encouraged. In a[illegible]ion, if a relationship is established between the accounting system and the inventory and evaluation of equipment items as well as between the flow of purchase orders and the inventory of movable and fixed equipment, it will be easy to maintain the flow of cost data for contract purposes. In other words, an accurate inventory is needed not only for insurance purposes but for proper management of the institution

Inventory development is a long and tedious operation. The university may begin the study itself, using its staff to complete the physical inventory and to evaluate it Thereafter, however, an equipment appraiser should review the financial data and the methods used to correct or adjust the data in file. If the inventories cannot be so compiled, it will usually be easier for the university to engage the services of a national or local appraisal firm that has had experience with institutions of higher education. Such firms have developed techniques and valuation procedures that meet cost accounting standards and are generally acceptable to financial agencies and government. Once the inventory has been established, the program may be updated by formula by the institution itself, with periodic review by appraisal or engineering firms and with the concurrence of banks, insurance companies, and others who service the university. Such inventories are relatively costly to compile experience indicates that third-party firms can usually perform them more cheaply and more accurately than the university itself.

Matching Facilities and Program Exposure to risks is a function of use, and the potential for human and property losses determines the cost of insurance and provides a direct measure of the potential impact of possible losses on the assets and income of the institution. Analysis of the property in relation [illegible] programs and space requirements is thus essential. As far as possible, space should be allocated to minimize exposure and, hence, loss cost

One should not, for example, locate a computer in an old fire-prone facility or one to which access by public and students is easy and general

Such locations automatically create high risks which, because of the high equipment value, increase the costs of insurance. In selecting a location for programs and facilities, not only limitations on access but such appropriate warning devices as smoke and heat detectors should be considered in the planning.

The essential point is to choose the optimum mix of location, program convenience, and exposure. An annual review should thus be made of programs, facilities, and exposures, together with construction and maintenance plans and costs, to project both property and liability problems. A spread-sheet comparing alternatives in facilities and programs and their cost impacts should be prepared for periodic policy discussion; these should take place frequently enough to incorporate these considerations in current programming criteria.

MINIMIZING LOSSES

Another area of property loss control is the development of procedures to minimize the extent of any loss when it occurs. Such procedures often prove as important in the process as the original preventive measures. Those who view them as part of the same procedures are to some extent correct, although they use different personnel and techniques. Among such procedures are early-warning devices, security systems that make it possible to discover that a loss is in process almost as soon as the event is set in motion

Early action by appropriately trained personnel may significantly reduce loss In a laboratory explosion or fire, immediate warning to the security office and evacuation of personnel minimizes both the loss potential and the loss itself. Training laboratory instructors and other personnel in the use of manual fire-fighting equipment reduces loss by setting in motion procedures for dealing with the fire while it is beginning.

Once the fire has been controlled, plant personnel and persons using the laboratory should immediately separate damaged from undamaged property and secure both. Every effort should be made to evaluate and salvage all equipment and material that is not significantly damaged or can be repaired reasonably. Surveillance should be established to prevent further loss until the insurance adjustment personnel or the university claims office, depending on the size of the loss, have inspected it and made a determination as to the appropriate method of treating the damage. Thereafter, security measures should be taken to care for equipment, materials, and supplies, so as to minimize replacement requirements.

If the loss is large, it may be necessary to provide substitute facilities in other buildings, even to find facilities off-campus for short-term occupancy In many instances, it may prove to be advantageous to cancel use of an entire facility for a short period to permit round-the-clock repair activity that will quickly return it to use, instead of using parts of the facility along with substitute areas elsewhere and retarding the repair process Since such a

decision involves both income and academic policy, both must be considered and a decision made in short order, so that action can be taken.

Staff members who work with students should at the earliest moment seek to identify any physical injury to persons. Quick action to provide emergency treatment and ongoing care, as well as assistance in settling claims against the students, homeowners' or personal-property floaters for personal equipment lost in the incident will forestall many continuing difficulties.

The objectives of all of these procedures are the same—reduction of the chance of loss or minimization of the loss and the loss costs. Insurance carriers and their underwriters are now especially conscious of the insured's attention to such procedures and tend to base their evaluation of risks and costs of risk on the level of the insured's effort to insure that they are followed.

SHIFTING OF RISKS

Another approach to loss cost control is to shift risks by contract. If the university operates in commercially provided facilities, it may shift many of the burdens of property loss cost and protection to a third party by contract. For example, when a facility is leased by the university, the instrument may be drawn to provide that the lessor assumes all responsibility for the maintenance and operation of the facility, including costs of loss protection and insurance. It may also be made a condition of the agreement that liability costs, except those grounded in university program—such as liabilities for professional responsibility—are to be assumed by the owner of the facility, and the university and its staff are to be named as additional insureds. Although the regular rental payment will thus include the equivalent of the loss protection and insurance costs, the impact will be spread more evenly, so that the cost may be distributed and recovered effectively without imposing significant risks on the institution.

Institutions that operate properties such as hospitals, welfare centers, and other centers offering specific service may question whether or not their financial position is strengthened by such property and programs, when the total costs of operation, including liability, are assessed. Community health centers, for example, create the hazard of malpractice liability. More particularly, by virtue of the location and type of facility, they multiply the relative public liability hazard to the campus in general. Although separate insurance coverage may for a time keep the cost effect to a minimum, the liability of the entire institution will ultimately be affected. On the other hand, refusal to participate in such service programs subjects the university to criticism for its failure to meet its obligations or to train its students for such activities. Again, institutional policy and financial impacts must be blended in the decision process.

LIABILITY RISKS AND THEIR MANAGEMENT

A major area of risk, and by far the greatest in its potential cost, is liability for accidents and incidents of many sorts. With the waning of the protection of judicial and statutory immunity, institutions of higher education are increasingly subject to attack by individuals injured either while on the premises or participating in college and university programs. A related hazard is the work-connected accident suffered by a staff member or student engaged in the program of the institution. Essentially, these are property operation risks to third parties, the resultant damage from which is reflected in medical costs for the repair of an injury and special damages awarded to compensate for lost earnings and pain and suffering. Punitive damages also may be awarded occasionally if it can be established that the institution was grossly negligent in the maintenance of its property.

Human Engineering. Employees

There are many approaches to the management of liability risks. With respect to work-related incidents, human engineering should be undertaken by the personnel department of the institution. All members of the staff, particularly supervisory workers, should be educated to eliminate hazards and practices that lend themselves to accidental injury. In addition, every member of the staff should understand his relationship to the institution and the potential of loss to himself and the institution as a result of incidents caused by his carelessness or his ignorance of procedure.

All staff members should be educated in the means of reducing damage once an incident has occurred, through taking appropriate remedial steps. Thorough education in first aid procedures, in the priorities of notification, and in procedures for reporting details, including the names of witnesses, is essential. The objective should be to convey that the institution provides a safe environment only to the extent that the employees are safety-conscious and seek to use good judgment in their handling of themselves, equipment, and other people.

Staff members should be trained in follow-up to ascertain the cause of each accident and to redesign programs to deal with the cause of the incident, to whatever extent possible, so as to preclude further occurrences. For example, if an employee is injured in handling chemical stocks, through breakage or spill, standards of handling and appropriate training in the direction of handling procedures should be developed. Similarly, if students are injured on a stairway, it should be examined for light or other fault. If none exists but accidents continue, use of security personnel to slow movement and minimize crowding together with publicity calling attention to the problem, may be indicated.

Continuous training in personnel safety is vital. Involvement of top policy officials as well as line supervisors in such programs will underline their

significance. Incentive devices, competitive programs in safety, suggestion systems, and penalties for careless or improper handling of an incident will also draw attention to the problem.

PUBLIC LIABILITY: BODILY INJURY

In a related area, accidental damage to the public, that is, bodily injury through incidents on the premises or as the result of participation in a program on the premises, many of the same procedures apply. Among other things, plant and property should be inspected regularly and frequently both by the university personnel and by the engineering and safety personnel of the insurance underwriter, who are trained to recognize physical hazards and to suggest means of overcoming them. Appropriate lighting, warning devices, and posting of security personnel are essential; all such activity should be designed, first, to minimize the chance of accident and, second, to minimize the consequences.

Once all reasonable precautions have been taken, the next step is to assure that personnel have been adequately trained to reduce losses once they have occurred. It is imperative for several reasons that information on any incident involving bodily injury be obtained as quickly as is possible. First, it is desirable to provide immediate assistance and whatever care is required to deal with the injury itself and to minimize its impact. In a fall, for example, the person should not be moved until it is certain that there are no broken bones or other internal injuries. If the incident is observed, the employee who sees it should recognize his responsibility for provision of aid, for control of the person involved, and for reporting the fact of the incident as quickly as is possible. Because of the present social attitude toward institutions involved in incidents of this sort, every effort should be made to find one or more witnesses to the incident and to secure appropriate information from them. Names, addresses, and other information by which they can be located should also be obtained. A complete report should be prepared and forwarded to the risk manager or, if the incident appears serious, telephoned to him so as to permit immediate response.

The most effective way to eliminate accidents, of course, is to eliminate hazards. But since one cannot eliminate all risks without ceasing to operate, the object should be to maintain a relatively safe operation and to provide sufficient personnel to minimize problems, to render assistance, and to secure appropriate information when accidents do occur.

An equally important facet of procedure is training in dealing with accidents to the public. Since normal operation is almost certain to produce some accidents, being equipped to deal with the results, including provision of appropriate insurance, is vital.

An important element in the handling of accidents is the dispatch and the demeanor of those who deal with them. Training of personnel is thus vital since in the present suit-prone market ready assistance, solicitous behavior,

and a willingness to deal immediately with an emergency will frequently produce an attitude relatively friendly to the institution, and so minimize chances of legal action. It is frequently cheaper to take direct and immediate steps to deal with persons involved in accidents than to let them take care of themselves. If there is any possibility that fault may be imputed to the college or university, someone with a reasonable amount of authority should be able to respond effectively at the time of the incident. In many instances, a simple apology on behalf of the institution and a solicitous manner with respect to the injury will overcome whatever antagonism may have been aroused. Further, if negligence seems evident, it may be good business to provide for medical expense and to get a medical description of the injury. A waiver of liability is also desirable, although too much pressure may suggest further action to the injured party. Obviously, appropriate training and notification procedures must be established if staff members are to act in the best interests of the institution.

Bodily Injury to Program Participants

Another accident problem has to do with students, or parents, or the general public attending university functions, including classes. The liability of the institution in this case extends well beyond that which may eventuate from use of property by third parties not related to it, and a number of possible approaches may be taken. In addition to the staff training recommended above, the institution should take steps to educate its students in the damage that may result from unsafe or improper u. ge of facilities. Security personnel, including student assistants, should be available to supervise usage and to prevent improper actions in situations that offer the possibility of significant damage In the classroom and laboratory, the objective is to avoid accidents through education and surveillance; in extracurricular and campus activities, to induce safe activity and concern for the welfare of others.

The information campaign where the objective is to promote safety might note, for example, that student tuitions must bear the cost of liability coverage and that the excessive cost of suits has been reflected in increased tuition charges. When it becomes clear to the students and their parents that they are in fact paying for the incidents, the result should be increased attention to safe behavior and a reduced proneness to undertake legal action in cases that appear to offer a possibility of recovery.

Managing Student Risks

Another course of protective action is to include a fuller description of the university's program in the catalog, pointing out some of the risks implicit in the use of the facilities, both classroom and campus A general disclaimer, noting the provisions for security and maintenance that have been undertaken by the university, should also be included. For the large urban or primarily

graduate institution, a policy statement concerning the liability of the institution for the behavior of students and their necessary acceptance, in effect, of the waiver of the doctrine of university responsibility for student behavior, is necessary. The legal situation in each area should be evaluated with care and the whole matter discussed with university counsel before any action is taken.

The initial application for attendance at the institution might contain a statement of the conditions of attendance and, in consideration of acceptance as a student, a waiver of liability by the student, his parents, and his spouse, for accidental injury incurred in the course of the program. Although such waivers or hold-harmless clauses are neither foolproof nor a guarantee that no liability action will be taken, they provide a line of defense that may be used to deter some kinds of actions.

In the small undergraduate campus college, it is almost impossible to waive or to get waivers of liability; injuries there tend to be a function of the program, and the institution must be prepared to deal with them. An effective way to provide for such incidents is through the operation of a student health and accident insurance program that is made a condition of enrollment, and which, supplemented by a health service on campus, provides a means of dealing with incidents as they occur and a defense, although not necessarily a complete one, against action by third parties. If a health service is provided, waiver and consent forms with respect to health service care probably should be contained in the application to attend.

Extracurricular Activities

For participation in extracurricular activities, it is advisable in the present environment for the institution to prepare a complete hold-harmless statement or waiver based on informed consent, exacting a consideration and requiring personal accident insurance. In this way, regardless of the activity, the student is protected for the costs of medical care and other expense incurred as a result of accident, and the institution is reasonably protected against action by the student, his parents, his spouse, or others.

PREPARING FOR LIABILITY

Because the legal conditions governing liability vary widely among the states, ranging all the way from sovereign immunity to the absence of any immunity or protection, each business manager should present university counsel with a description of the activities undertaken for review with reference to liability. In addition, the insurance carrier handling the liability program should be fully informed and should participate with counsel in making the decision on areas to be covered. A great step forward has been made when the extent of liability has been appraised and the cost and method of covering it has been determined. Moreover, protection against action from campus and extracurricular programs is not as likely to hinder

the program significantly. On the other hand, since the institution of higher education is in business to provide education, it must be aware of the risks involved in its programs. It may be held responsible for not making adequate provision to deal with them, and its failure to be aware of hazards and to take adequate steps to protect the students both from injury and from financial losses as a result thereof may subject it to considerable criticism.

Program Liability

A major area is program liability, a newly developing field with respect to higher education, the parameters of which are as yet unknown. The risks in this area have been illustrated at several points in this manual: professional liability, incurred by institution and faculty member alike in performance of the educative function; and professional malpractice and product liability incurred by the health service, by the hospital, by the physicians and nurses, and by many others including personnel handling psychological experiments or problems, speech and hearing problems, or problems of physical therapy. Since the individual in performing his service, either in training or in treatment, represents the institution, he incurs liability both for himself and by agency for the institution. To whatever extent he acts as an agent for the university, the liability is that of the institution; to whatever extent he proceeds in his private pursuit as a business consultant or as a private practitioner, he himself incurs liability, although his utilization of university facilities may create some residual liability which attaches to the institution

Liability may be incurred, for example, by a psychologist who attempts to condition a student with a problem of stuttering and in the process changes the personality of the student. To whatever extent the potential qualitative changes were not explained and understood by the student and those responsible for him, the practitioner may have incurred significant financial liability both for himself and the institution. The example may be multiplied many times throughout the average university, but is particularly evident in schools of education, arts and sciences, medicine, social welfare, business administration, and others in which the faculty members both practice, training students in the process, and teach. It is impossible to avoid liability in these situations, except through a very sophisticated procedure of obtaining informed consents from the individuals involved and from all related parties. Consultation with counsel in each of the areas is vital in order to establish the parameters of risk and the requirements for appropriate protection. In general, a carefully planned information procedure, involving all parties to the procedure, and use of a waiver and consent form, appropriately witnessed, will serve as a primary defense.

The Department of Health, Education, and Welfare has developed a detailed informed-consent procedural requirement, based on internal project review, as a requirement for receipt of grant or contract funds in support of

program. The new form of clearance, effective July 1, 1972, required certification that the institution would provide facilities and professional care for one alleging injury in the process. This agreement is a relatively loose form that should be adapted to reflect the actual position of the university. Where full liability coverage for malpractice exists, the form can be modified to reflect such care when tort action establishes liability. If the institution claims to be immune or does not intend to cover such liability, a different approach, including a disclaimer of liability based on such action, probably should be incorporated into the informed-consent procedure. Other alternatives that are in development should be checked with counsel before a procedure is adopted.

Higher education may well be driven to cooperate in sponsoring legislation to limit liability for services rendered either in the training process or as a part of a practicum, in consideration of the reduced or "no price" service rendered, provided that the client has a complete understanding of the possibilities.

In the practicum, of which there are many, involving students in all the professional schools of education, business, social welfare law, and medicine, the institution is subject to considerable liability of several different types affecting several different parties. It appears that the remedy will have to be legislation establishing standards for the practicum and providing coverage for accidents to the student through application of a modified workmen's compensation or other procedures. Protection of third parties may also make it desirable to limit by statute the liability that can be incurred. Higher education and related professional associations are already working on legislation to cover parts of the problem. Until an effective solution has been reached, however, the institution has little choice other than to operate with such insurance protection as is needed to assure financial security for itself and for those involved.

Additional program liabilities may be incurred in research, in the areas of patent, copyright, and discrimination, as well as many others that are not yet known or defined by legal or insurance scholars. It is imperative that the institution protect itself in these areas by acting with the advice of counsel to secure whatever informed-consent, waiver, and hold-harmless protections are possible, and through the acquisition of insurance.

The descriptive material above is not designed to be an exhaustive list of the liabilities to which an institution subjects itself in its programs. Neither does it attempt to treat the area exhaustively, since the subject is covered from an insurance viewpoint in Chapter VII. But since colleges and universities and their personnel, as they assume responsibility for programs, including service and training, become financially responsible and liable for incidents that arise in practice, it is vital that they provide themselves with a residual blanket or comprehensive liability coverage against this kind of action.

CRIME AND MYSTERIOUS DISAPPEARANCE OF PROPERTY

Another area of risk, particularly in the present environment, is the result of criminal acts. Crime may be divided into several areas, including such problems as mysterious disappearance, robbery, burglary, theft, vandalism, malicious mischief, and riot and civil commotion. The first four involve removal or disappearance of items. Robbery, for example, usually means forcibly taking something from someone, while burglary implies forcible entry and removal of an object. Theft is generally defined as any act of stealing. Mysterious disappearance normally refers to the disappearance or loss of an item from insured premises, without evidence of theft in any form. The second group of hazards involves wanton destruction of property. Vandalism and malicious mischief are generally defined as willful and malicious damage to property by persons understanding the consequences of their actions, not including theft, larceny, pilferage, or other acts of this type. Riot and civil commotion, on the other hand, include acts or actions of groups of people, and usually imply random destruction of property as a result of group actions such as strikes or demonstrations, including personal violence. In each of these cases, the institution stands to lose assets through what amounts to disappearance or wanton destruction.

Mysterious Disappearance

Mysterious disappearance has become a most common problem on many campuses and severity varies with the location, the degree of security the institution has mounted, and a number of social factors. In many of the large urban institutions, there are apparently organized groups that systematically invade the facilities of the institution and remove the small high-value business and laboratory equipment such as typewriters, adding machines, oscillographs, and the like. Similar experience has been recorded by hospitals, which also lose medical supplies.

By tradition, most college campuses are maintained as open facilities, available to students and, incidentally, to the public. Although most institutions maintain some security in areas where items of reasonably high value are maintained, it is difficult to cover a large number of areas simultaneously—and most institutional buildings are like rabbit warrens from the standpoint of security. With many exits and relatively large numbers of staff and students who come and go, not to mention the service personnel who maintain the facilities for the institution or its contractors, the buildings are an invitation to disappearance. In several major urban institutions, the mysterious-disappearance rate has been as high as $10,000 in certain months during the past two years, the bulk of the losses being typewriters and other business and laboratory supplies and equipment.

Part of the problem is caused by staff and students themselves. In many institutions, staff members are permitted to remove equipment, taking it on

field trips or to their homes for personal usage. Although appropriate permission is normally required, with some sort of check-out system, it becomes difficult for security personnel to control removal, particularly when staff members who are well known are present during the removal and make no effort to control it, or when they are themselves responsible for it.

Disappearances of this sort may result from either (1) carelessness, when the staff member forgets that he has the equipment or keeps it at home so long that he forgets that it belongs to the institution, with the result that the institutional inventory is reduced; or (2) theft; personnel who have authority to use, clear, or secure facilities have in a number of cases been found to be members of stolen property rings.

Theft of this sort is difficult to control, since it is nearly impossible to isolate those at fault. Plant and security personnel, and in some cases professional personnel, have keys to facilities; improper operations within the facilities by any of these are difficult to detect unless particularly tight personnel surveillance is maintained at all times. Absolute control of outside keys, recording each issuance, establishing working groups of three or more persons for clean-up or repair, and providing security surveillance for facilities that are opened solely for plant work are some of the steps that may be taken

One institution, by picking up all outside entrance keys and stationing a guard at the single open entrance to each facility as it was cleaned, reduced the losses of laboratory equipment by nearly two-thirds in a single month. It is not clear whether the personnel at that institution were involved in the disappearance, since during the clean-up process there had been no surveillance or door control and anyone might have entered the building during that time without detection. The fact remains, however, that the security procedure played a significant role in reducing the losses.

Although the policy is harsh when applied to staff across the board, it makes considerable sense to prevent removal of institutional equipment from the facilities, except in the hands of appropriately identified repairmen. In addition to adopting such a policy and enforcing it, the institution should also consider metallic stenciling of all equipment to prevent its sale, since complete rebuilding of the item is necessary to remove the case. Application of locking devices to deter removal of equipment will also help to reduce losses. When staff are permitted to remove equipment, the process should involve a central inventory clearance, issuance of a pass, and a security check, with periodic verification of location.

Although removal of equipment for field trips is normal, it should be issued only to responsible personnel trained in handling and storage off-campus. A check-in procedure, as well as regular property inspection, will help to maintain the policy. Property insurance floaters providing all-risk coverage anywhere should probably be purchased to cover such risks

Personal Property. Personal belongings of an individual, such as clothing, personal papers, money, insurance policies, books, radios, etc., including artifacts or other movable (as opposed to fixed) objects of value owned by an individual or institution, are likely to disappear from the college or university facilities. The institution must take a firm policy position with regard to such equipment or property. First, no personal property of staff members other than personal effects (outer garments, briefcases, purses, etc.) should be on the premises. It should be clear to all staff members that, as a policy matter, their property is their responsibility and that its use or location in university facilities will not change that fact. In other words, each individual employee becomes solely responsible for his property, including research material in file and artifacts, and for providing whatever security he wishes to give it. A few losses in this area will undoubtedly strengthen security if the employee is made responsible for his own property.

Many staff members will contend that they have special equipment, research papers, and files or artifacts, that are essential to their work. When such is the case, and if department chairmen, deans, or other academic officials concur, the university may make arrangements for secure storage of the property or duplication of papers and if the value is sufficient, for insurance against its disappearance. (See Chapter VI for additional details.)

Money, Securities, and Valuable Papers. A second type of problem is the disappearance of institutional monies, securities, and valuable papers. In this area, crimes of robbery are far less common than embezzlement or fraudulent conversion. To provide reasonable security, all employees who have access to monies, securities, or valuable papers should be under surety bond, and appropriate audits or other regular safeguards established to prevent disappearance. Appropriate personnel selection procedures are an excellent first step in this direction, since putting responsible persons in positions of trust minimizes difficulties of this sort.

The problems of institutions of higher education are not significantly different from those of any commercial or industrial enterprise whose personnel handle valuable items. The best security is a tight system, with regularized audit and supervision to assure reasonable control.

A related problem is the security of third parties under contract with the university or college. Protection is based on the terms of the agreement, the regulation of the contractor, and adequate inspection procedures. Performance bonds provide a source of financial protection, and the institution should undoubtedly build into each of its major contracts provisions requiring such security.

Vandalism, Riot, and Civil Commotion. Another broad area of loss is the result of vandalism, malicious mischief, riot, and civil commotion. In the present environment, particularly in urban centers, institutions are subject to significant damage ranging from graffiti on the walls of the facilities to breaking of windows and destruction or disappearance of furniture, display

cases, or equipment. Although such actions may involve the students of the university, youngsters from the community and members of the public "unknown" far more frequently appear to be the cause.

Public education campaigns and security, including the development of techniques for relating institutional and community leaders, provide the only real sources of control in this area. Because of the lack of such controls or the refusal of colleges and universities to develop such relationships, insurers have frequently refused to cover the hazards. When this happens, it is incumbent on the institution to provide whatever security is necessary or desirable in view of the circumstances and the kinds of damage likely to be inflicted. But organization of community and staff to operate with a system of goals and to work for constant control is the most likely remedy.

Against riot and student insurrection there are really only two lines of control. One is to develop joint governance by which the student himself becomes a part of the educational management process, with some responsibility for control of damage to the facilities. The other is to develop a security program capable of dealing with mob action.

Some student actions are precipitated or controlled by third parties, who may or may not be students, whose *raison d'etre* is their dedication to destruction of the institution. The operation of security forces both to anticipate such actions and, where necessary, to control them, is essential. For reasons of policy, it is vital that whatever security forces are used, including city or official police of whatever variety, be so trained that they will not inflame or promote commotion. Intelligence before the fact and reasonable crowd-control procedures may provide the answer. The fact that such procedures exist is a real asset in negotiating insurance coverage and may well make it possible for the institution to acquire insurance to provide relative financial security. Cooperation between the campus security forces and the local law enforcement agencies is also essential. In the present environment, proper education of those to be engaged in riot control is as much a necessity as the control, since inflammatory action may precipitate or extend damage instead of controlling it. Various approaches to providing insurance coverages against such losses are suggested in Chapters VI and VII.

MANAGING THE RISKS BEYOND CONTROL

Once all the risks and loss potentials have been identified and evaluated, it becomes necessary to determine whether to attempt to eliminate the risk or to assume it. If the election is to assume the risk, one needs to decide further whether any protection, financial or otherwise, is essential, and, if so, whether that protection should be obtained through self-insurance, purchase of insurance, or other hedging device or program.

If one desires to undertake a risk, the risk manager must, in effect, evaluate it just as an underwriter would. Having accumulated past experience from his own institutional records, on the basis of the exposure and the

number of incidents, he will make projections of frequency, of the probability of recurrence, and of the probability of the extent of damage that will be incurred. He must also evaluate the risk minimization procedures that could be established to obtain a basis for judgment as to what step or combination of steps, including loss protection programs, self-insurance, and commercial insurance, he must take.

If the business manager decides that the cost of coverage, given the experience pattern, is such that he needs no additional protection or minor accumulation of reserves in house, he is in effect deciding to self-insure the risk. Having so decided, however, he must either make budget provision for the maximum probable frequency and severity of loss, or set aside cash reserves capable of meeting whatever loss or losses are incurred without affecting the current cash position. In most instances, one who self-insures will program his risk; that is, he will undertake to cover some portion of the total risk, usually the bottom layer at which losses most often occur, providing commercial insurance for losses in excess of that so covered. (For additional detail, see Chapter V.)

If the management elects to insure commercially, it will be necessary to build a similar data base for inclusion in the specifications presented to insurers. In addition, the method of purchase and the combination of coverages to be purchased should be determined and the advantages and disadvantages of providing for the risk in both ways established. (For detail on the data to be included in an insurance specification, see Chapter IX.)

Management will also have to decide whether to underwrite directly with insurers or work through agents and brokers. Since each of these topics is developed in some detail in subsequent chapters, they are merely mentioned here as part of the negotiating and decision-making process.

CONCLUDING OBSERVATIONS

The college or university is exposed to a wide spectrum of risks. It must carefully evaluate each of these risks in terms of its potential impact on the assets and income of the institution and make specific determinations as to the kinds of management procedures required to deal effectively with them. It must determine to what extent risk prevention activities are worthwhile, to what extent loss reduction activities can be supported, and the extent to which it can assume or ignore risk. It must determine what part of the risk can be self-insured or treated as a deductible, and, finally, the portions which must be insured.

Having made these determinations, the wise institutional risk manager builds specifications and secures, by negotiation, the interest and effective advice of a number of carriers, selecting that one which most nearly meets his needs. He will do this in concert with other administrators from his institution and with the advice and counsel of the board, thus gaining basic policy support for the risk management and insurance programs.

V

The Nature of Insurance

Insurance has been defined as a "social device" to provide, by contract, for the sharing of losses among the members of a group subject to the same perils and roughly the same degree of hazard. An insurer has been defined as a person or company performing the function of assuming the risk by transfer, in effect coordinating the process of sharing losses. He calculates the probabilities of losses, he assesses the relative contributions required from each participant to cover losses he collects the contributions (premiums), and he adjusts losses evaluating and paying them He also serves as the guarantor, his assets along with those accumulated by the group, guarantee the ability of the group to meet any claims As a primary risk-taker, he, in fact, accepts both the transferred risk and the responsibility for organizing a coverage under which premiums may be pooled for that purpose.

Insurance is today highly regulated by the states, there are licensing requirements and line criteria which establish minimum standards for underwriting risks and marketing the coverage In theory, at least, the insurance enterprise is standardized by requirements and controls sufficiently uniform to give reasonable assurance that the responsible parties can meet their contractual obligations

This and the three succeeding chapters are designed only to highlight and explain some of the principles and problems of insurance. There are technical treatises and textbooks written to detail the intricacies of each of the points to be covered No attempt is made here to cover exhaustively either the whole subject or any part of it. The object is to provide background and to direct attention to problem areas The reader must consult expert legal and insurance counsel in dealing with most of the issues if he wishes to be reasonably sure of his actions There are a number of excellent textbooks in the field of insurance, (see p. 62 for such list) and a number of services and other sources (see footnotes) which may be used to obtain more complete information on any point of question

THE INSURANCE CONTRACT

The insurance enterprise operates in a competitive market, although the basis of competition is more often service than price because of state regulation. The basis for individual relationships between the insured and insurer is the insurance contract, which may be either a standard policy form or package, or a manuscript agreement. A large body of common and statute law surrounding the insurance contract determines the form, the characteristics, and the interpretations of the contract.

The parties to the insurance contract are the insured and the insurer. The insured may be an individual, an association, or a corporation that has a legal interest—that is, something to lose—with respect to the property or event insured. Such an interest is usually required by law as a condition of a valid legal contract. In institutions that include various forms of organization, the parties all should be named, *e.g.*, X University, X Research Corporation, etc., and the specific interests set forth. The insurer is usually a company which ordinarily should be licensed to do an insurance business in the state of the insured.

The purpose of an insurance contract is to provide indemnity in the event there is loss as a result of the peril(s) insured. The insurance contract aims only to reimburse or indemnify loss incurred by the interest(s) insured up to the amount insured. Technical value clauses have been developed which permit defining the indemnity calculation in various ways ranging from "actual cash value" to "replacement" value. (See p. 55). The point to be made is that the contract is designed to indemnify for loss and the terms of the indemnity are technical and specific, as set forth in the contract.

Because many risks are so large as to exceed the capacity of a single company, reinsurance (a contract whereby one insurer agrees to share in the losses of another by specific agreement or by treaty) frequently is provided. An alternative approach, used in some cases, is a syndicate of companies (all primary insurers, who join together to underwrite a particular risk). In this case, each carrier is represented by a contract or is a party to the primary contract, whereas in reinsurance the front carrier, the primary underwriter, is the sole party, other than the insured, to the insurance contract. However, both reinsurers and syndicates of primary insurers normally operate through a single carrier. Such arrangements are set forth in contracts among the insurers.

The primary insurance contract is unilateral, that is, it is written by a carrier and sold to an insured. The terms of the contract are set by the carrier, and unless specifically modified by legal endorsement, it will be construed as written. In general, if there is doubt as to intent, the policy will be interpreted in favor of the insured, but the insured must ascertain that the agreement fully covers the perils, otherwise precedent may govern the terms of the arrangement. Further, any interpretations or agreements should be in

writing, executed by all parties; oral understandings have no standing in court. There must be a legal instrument designed to accomplish a legal purpose and the terms of the agreement must be understood by all the parties.

A large number of standard form contracts, together with standard modifications or endorsement forms which modify the standard coverages, have been developed. These take the form of single or multi-peril policies. Packages, *i.e.*, a policy which contains a number of coverages, have been prepared to suit specific purposes For example, an SMP (special multi-peril) institutional form has been developed covering "all risks" with certain exceptions, which may be applicable to the smaller institution. A similar end may be attained by use of the account approach with coverages adopted for the perils to be treated. In both cases the forms used and the coverages provided are standard, although they may be modified by special endorsements. These are rated or are priced at rates approved by the state.

For large risks, in all cases where the values to be covered are in excess of $100,000, the carrier may establish the premium without reference to the manual rates, and may negotiate a separate and unique agreement with each such insured. Such agreements normally are contained in manuscript form, *i.e.*, a particular agreement prepared for the case, and each such agreement must be approved by both of the parties and the insurance department of the state of issue. It may also be handled by one of the package forms, although this would tend to be more rigid than necessary if the account or manuscript approach were used.

THE MANUSCRIPT POLICY

In many cases, the institution will find it advantageous to cover all of its property and/or liability risks, or both, in a single policy, usually a manuscript form. Such procedure avoids the necessity for coordinating the provisions of a number of separate contracts to assure that they are exactly uniform ("concurrent"). Concurrency is vital from the insured's point of view. One must be absolutely certain that the terms and conditions of all contracts relating to a risk or group of risks are identical, that is, are concurrent; otherwise, by statute or by contract provision, the contracts will be applied in the event of a loss on an assumption that each of the other contracts is the same as the individual contract being settled. For example, if one policy on a building is written to cover replacement value and another actual cash value, in the event of a loss each will pay as if the other were identical to it and the resultant will be a settlement value considerably different from the expected.

Perils Covered by Individual Contracts

Standard insurance contracts and endorsements, usually printed forms, tend to cover loss by a particular peril to a single property, such as fire.

Another policy may be written to cover the liability associated with the operation of that property and others to cover consequential (or indirect) losses—those that may occur as a result of the perils insured. In this area, great care should be exercised to make certain that each of the policies covers particular perils and that each is written in consideration of the others. Similarly, one should be sure that all properties are completely listed in each case. Failure to do so will almost certainly create problems if there is a loss.

Packages, insurance contracts covering a number of perils, have been developed. These, too, are prepared in standard form. The packages may be purchased by the small institutions, those having plants valued at about $25 million, with the advantage that the risks, values and applications of the coverages will be coordinate. They may be modified by endorsement, but the packages tend to be relatively rigid.[1]

Alternative Considerations as to Value

Property contracts may be written on any of several alternative value bases. They may specify a pre-agreed dollar value (a value policy) or an amount, expressed in terms of "replacement" value or "actual" cash value. It should be clear to the insured that, in the event of loss, any payments made will reflect the *actual cash value* of the property at risk at the time of the loss, unless otherwise stated in the policy. One cannot, for example, expect to obtain a new building for an old building, simply because a policy for a specified amount has been purchased. If replacement is the intent, the policy should so specify and the basis of the value definition should be stated. The institution must have a reasonable estimate of the property value at risk, including a statement of method, which can be validated either by appraisal, or contracts for construction, or both, and it must be clear that the policy intent was to provide coverage in those specific terms. (See Chapter IV.)

One of the first steps in preparing an insurance program is to make a complete inventory of real property and personalty including appraisals. To be useful, the inventory must include a complete listing of all property and equipment, consistently valued. In normal course, appraisals will state values in several ways, including historical or original cost depreciated, the present market value, and the replacement value. The information should be placed in the hands of the insurance carrier during the negotiations for coverage. The insured and the carrier should then agree on the specific properties and the values to be covered.

Coinsurance Clause

Although the ordinary insurance policy may be written flat, *i.e.*, covers loss from the first dollar up to the full value or policy limit, because many

[1] See, for example, The National Underwriter Company, "Fire and Marine Section, A-1," *Fire, Casualty and Surety Bulletin*, October, 1970.

buildings contain residual portions—foundations, utilities, etc.—that are not likely to be destroyed, something less than the full value may be acceptable to the insurer. To provide reasonable terms for the coverage, the policy may include a coinsurance clause by which the insured and the insurer agree in advance that a given portion of the agreed value will be insured. If this portion has not been maintained, the parties each will share in any loss in the proportion of the amount of coverage to the coinsurance value. Under a 90 percent coinsurance clause, for example, the insurer agrees to settle all losses up to 90 percent of the full value insured at the time of the loss, provided that an amount of insurance equal to 90 percent of that value is in force. If the amount insured is less than 90 percent of the value at risk when a loss occurs, the coverage will assume the portion of the amount of the policy to 90 percent of the value at the time of the loss.

An example may be helpful. For a building with a replacement value of $1 million, under a 90 percent coinsurance clause, insurance with a face amount of $900,000 should be in force. If the insured wishes to cover replacement values and has not adjusted his current values regularly, when a loss occurs the question will be What is the present replacement value of the facility? If we may assume the property now has a replacement value of $1.5 million and the insured has $900,000 of coverage in force, and there is a loss of $500,000 (replacement value), what settlement should be paid? Since the replacement value (the agreed basis) is $1.5 million and the insurance clause requires 90 percent of the value in force, the policy should provide an insurance amount of $1.35 million. Since the actual amount in force is $900,000, and the loss is $500,000, the insurer will settle for 90/135 - two thirds of the loss—or $335,000. The insured will have to bear $165,000 of the cost of loss as a coinsurer, since he did not maintain his coverage at 90 percent of the value to be insured.

The Deductible

Wise risk management on the parts of both insured and insurer dictate that the policy include a deductible amount. To provide first-dollar coverage on an institutional building means, in effect, trading dollars to cover any and all insured contingencies which may occur. Since the insurance carrier must meet not only the cost of loss but also the cost of adjustment, including investigation and settlement of claims, a considerable cost loading associated with each settlement will, in the end, be borne by the insured. Under these circumstances it is sensible for the institution to construe as normal maintenance costs all contingencies up to some fixed amount per loss, or per year. This amount is written into the policy as a deductible.

The deductible may be stated as a specific amount for each loss or as a cumulative total of losses incurred per period of coverage or a combination of these two. The usual clause indicates that each loss up to a specified figure, such as $100,000, will be paid (absorbed) by the insured. In some cases the

deductible applies to each loss separately; in others it may apply to each loss up to some annual aggregate, in still others it may be cumulative, *i.e.*, all losses are absorbed by the insured until some aggregate is achieved in each year. In each case the insurer will pay losses in accordance with the policy. In the first case noted, *e.g.*, the insurer would pay that portion of each loss which exceeded the deductible; in the second he would pay as in the first case, but, additionally, all losses above the annual aggregate. It is vital that the insured understand the terms of his deductible and its purpose, and that he make provision to cover the deductible in his normal maintenance budget.

Self-insurance and the Deductible

It is an open question whether the insured should self-insure by funding the deductible or by handling it as a cost of maintenance. Many analysts contend that since, in normal operations, property losses are to be expected, those up to some value represent normal maintenance costs that should be budgeted and covered directly by the institution, and that losses beyond this level and below the stated deductible should be self-insured. In other words, where the amount of the deductible exceeds the amount for repair or replacement established in the maintenance budget, the insured, in effect, must himself write the first layer (the difference between the amount available and the deductible) of insurance by setting funds aside for that purpose.

An example in practice is provided by a large university that has incorporated into its physical plant budget for maintenance an item equivalent to 0.5 percent of the value of its property, to cover any property loss up to 0.5 percent of the total value at risk. The account is earmarked and, if not used by the end of the budget year, is transferred to the self-insurance reserve, originally established at $500,000, to assist in meeting losses which exceed the maintenance budget capability but which are below the deductible of $100,000 per loss and the annual aggregate of $1.5 million.

Except for the fact that the plant budget has an annual aggregate of 0.5 percent, while the policy provides for a $100,000 deductible, each loss, and a $1.5 million annual aggregate of losses, there would be no need for maintaining detailed records on losses up to the deductible. However, since the plant budget is geared to handle that amount only, it has been necessary for that institution to establish both replacement and self-insurance budgets designed to cover losses up to the deductible. Moreover, data are necessary to permit adjusting the losses for the record and for assuring that the insurance deductible criteria are met.

To serve as a foundation for its provision of the first layer of insurance, the university has developed data on ten years of experience that provide patterns of frequency and severity of losses, from these it has calculated an average probable loss, as well as a maximum probable loss to which it might be subject in any year. A cash reserve is established as a part of the

endowment fund and the institution annually replenishes it by contributing from its operations budget either a premium, calculated as the difference between the estimated maximum probable charge and the present value of the fund, or the surplus in the repair and maintenance budgets at year-end, or both.

Once the self-insurance fund has attained a value equal to the aggregate amount of risk to be self-assumed ($1.5 million), charges will be incurred by the institution only when losses occur or when the aggregate property value is increased to reflect adjustment to the current market. In years in which losses are charged (or when the fund is less than the aggregate limit), the regular prescribed contribution and the excess of maintenance funds will be transferred to the fund. It is to be emphasized that the fund is not an accounting reserve; rather, it is a funded reserve, established separately and maintained as a part of the institution's endowment account, which, in the event of loss, will be charged the difference between the maintenance capability and the actual loss, up to the amount of the deductible. To pay such loss produces no current effect on the income and expense statement of the institution.

The management of the self-insurance fund is in the hands of the financial officer who, in fact, merely guarantees the operations of his risk manager. The latter, like any insurer, records all incidents, reports values, establishes causes of loss, and obtains the engineering judgments necessary to correct deficiencies and to provide for operations. The patterns of loss frequency and severity thus developed become a vital part of the insurance analysis of the institution and serve as one basis for delineating payments of insurance premiums in subsequent years. Such an operation requires that a funded reserve be available at all times to meet losses, and that the basis under which payments are made be clearly understood by all parties. As a rule of thumb, an institution proposing to self-insure losses should aim to maintain a reserve equal to a minimum of 3.5 times the individual average probable loss up to the annual aggregate to be assumed, both of which are functions of actual experience.

OTHER CONSIDERATIONS

The Policy Form

In structuring an insurance program for an institution, it may be advantageous to organize various combinations of coverages to suit particular circumstances. Some large institutions may find it advantageous to deal directly with a single carrier, developing a comprehensive all-risk, blanket manuscript coverage. Although specific details must be spelled out in each of the lines, the comprehensive, blanket approach should be designed to provide coverage against "all contingencies, stated or otherwise," thus eliminating the

necessity of assuming that a number of policies are concurrent and all-encompassing.

The single-manuscript approach has the further advantage that it makes one carrier directly responsible for the management of the entire insurance process. That carrier handles the entire process, from underwriting to loss adjustment, and is responsible for all engineering advice. It can organize a syndicate of carriers to handle the risk directly, thus eliminating the necessity for layering the coverage, or it can handle the case with reinsurance, using its own treaties or negotiating special agreements for administering the program.

Even where a manuscript policy is used, however, it may be of advantage to the institution if certain risks are excluded and underwritten separately. For example, even if a personal property floater is included in the blanket, if particularly valuable fine art exhibits or valuable papers are brought to the institution, it may be desirable to provide separate floaters for them. Experience with the special properties then will not affect directly either the institutional property rate or its experience record. Similarly, if the institution has a particularly perilous, high-value installation, *e.g.*, a high temperature test laboratory or an animal development facility located at some distance from the campus and that is not protected in the same manner as the main campus, it may be better to underwrite and rate that installation separately. Such decisions should be made, however, only after careful evaluation of the financial and legal effects of separating the risks.

Specific Coverages

Some institutions may find it advantageous to undertake specific line coverages under standard policy (individual or package) forms, with endorsements to cover additional risks or perils. Although such coverage requires the same information that is needed for the manuscript coverage, during the negotiation process the risks will be broken down and independent coverages underwritten (individual buildings, *e.g.*, or individual perils, all buildings) by one or more carriers. Under this plan the coverages must be so specified as to assure concurrency; definitions, including recognition of the related coverages and their intents, should be acknowledged by endorsement.

The advantages of such an approach include the separation for individual handling of parts of the risk that may offer special advantages or disadvantages. Although more expensive, spreading the institution's business among a number of separate carriers may also be expedient. Such considerations can best be weighed at the local level; with appropriate technical insurance and legal advice, individual line or package coverages can provide protection as complete as that afforded by the manuscript form. Management problems will of course arise and advice on engineering and other safety factors must be solicited and coordinated. This process becomes a joint responsibility of the local institution and the carriers.

The Layer Approach

Instead of the vertical approach to coverage described above, by which all insurance or all insurance of a particular peril(s) is placed with one carrier, in some instances it may prove advantageous to segment the coverage in horizontal layers and to utilize, through a single carrier or the risk manager of the institution, the capacities of different segments of the market for different layers. An institution might, for example, cover the first $1 million of value (for loss purposes), over the deductible, through a single carrier. Since the greatest frequency of loss can be expected in this area and since the maximum probable loss is likely the basis for the upper limits of this policy, for all practical purposes the total insurance coverage needed for the probable situation is being provided by this carrier. The rate charged will reflect these facts, being considerably higher per $100 of value of coverage than where the whole value at risk is covered by a single policy. Additional layers of coverage—for example, $2 million, excess of $1 million; with $5 million, excess of $3 million; and $15 million, excess of $8 million—may also be provided. The relative cost of handling and the pure loss rates for each of the excess layers should tend to drop sharply, depending on the sizes of the layers and the ways in which the program has been structured, as well as the experience patterns established by the class of institutions for these risks.

In layering, the underwriters in each of the layers will wish to be informed of the underlying layers, as well as of the share of each layer, if any, assumed by the insured. The management of the layering and the handling of claims and safety programs must also be reviewed by the carriers to establish the viability of the organization.

A similar approach to the problem in the liability area is to purchase flat coverage for the underlying segments, *i.e.*, for stated values without regard to the total amounts at risk, and to provide an umbrella coverage overall, meaning a comprehensive excess layer which seeks to cover all remaining values, subject to a deductible equal to the base coverage.

The alternatives in structuring the insurance program are legion. The only imperative is a comprehensive analysis of the total of all of the perils and risks, and of the market conditions that bear on them. Decisions must be based on an understanding of the environment and the problem.

The size of the risk will to a considerable extent determine the market decisions as to formulation of the coverage pool. One would not be likely to use layers of coverage in dealing with a $2 million risk, which is too small to warrant it, with a $20 million risk, on the other hand, an excess layer or an umbrella policy for $18 million over and above a basic or comprehensive policy (*e.g.*, $2 million) could be justified. Once the administrator understands the risks, the available coverages, and the technical and legal considerations which govern their administration, he is in a position to organize and write a program that will provide maximum coverage against hazards both known and unknown for the best possible price.

SAFETY ENGINEERING

One of the most valuable services provided by insurers is loss prevention advice. This takes many forms, ranging from inspection of building plans, and the recommendation of specific modifications to reduce the chances of loss, to inspection of facilities and the recommendation of specific modifications to prevent or reduce loss. In addition to property specifications, safety engineering includes personnel plans, policies, and attitudes. Its essence is to produce a safe and secure environment, and to reduce chances of loss.

Other activities include: general testing of equipment; the Underwriters' Laboratories Seal of Approval is required, for example, for much equipment used in construction, training of the insured's personnel to spot and modify specific hazards and to use safe procedures, and inspection by experts to improve the security of operations, from which information and recommendations fundamental to the underwriting of specific risks are developed.

The institution should take every advantage of such service, using it not only as a check against its own plant evaluations, but as a basis for planning new facilities and programs as well as for loss reduction plans for existing ones. One of the conditions of accepting a particular contract of insurance should be agreement on the loss prevention engineering to be provided by the insurer. All insurers indicate that such services are available, but only the boiler and machinery carriers regularly perform them as a matter of course. The institution should negotiate both the specific services and the extent to which they are to be provided. Once under contract, a safety program should be put into effect and adhered to. If the insurer needs it, he should be prompted to provide such service.

Safety engineering is a two-edged proposition. Once an inspection has occurred and recommendations for change have been made, the institution's program must reflect conscious decisions with respect to them. Premium adjustments or loss of coverage may result from failure to correct conditions that have been called to the institution's attention. Certain actions may be judged to be unnecessary, and the rationale of such decision must be presented to the carrier and, if agreement is not reached, the institution may have to accept a rate penalty.

The objective of loss prevention activities is obvious. The success of the program is a testimony to the purpose of the institution and to its social consciousness. It will also be a real factor in determining ongoing costs of coverage and, hence, of operation. The net cost of insurance plus loss protection, however, must be calculated for comparative analysis to assure adoption of the appropriate combination of safety programs and insurance.

LINES OF INSURANCE COVERAGE

The insurance field, exclusive of the life and health risks, is divided broadly into two major categories. They are the property and the casualty

lines. In general, the property area may be categorized as coverage (limited or total) for inanimate objects such as buildings and equipment. It is essentially a first-party coverage, that is, the owner of or the holder of an interest in a property insures that interest against loss from any of a number of named perils which, if they should occur, would result in loss to the property.

In the casualty area, the principal lines include the direct accident coverages, workmen's compensation and the third-party (liability) lines, in which the interests to be protected are secured substantially against tort actions. To put it differently, the last named group covers areas in which one party may be deemed to be responsible for injury to another, either by virtue of an act of his own or by his failure to perform an act which would be prudent in the situation. In such cases, one may be adjudged guilty of negligence and, hence, financially responsible for any damages incurred. The losses in this area run the gamut from bodily injury incurred as a result of accident or other incident to personal injury resulting from the act or acts of a responsible individual in relation to any third party. In the first instance, one may be concerned with injury to person—falling down steps or tripping over a cracked sidewalk—with a resultant bodily injury and medical expense. In the second, one is concerned primarily with injuries to third parties, *e.g.*, in intangible areas such as reputation or pain and suffering, resulting from malpractice or professional misjudgment.

In the following three chapters, the types of insurance contracts available to cover the broad risks in each of these areas will be described briefly. No attempt will be made to cover all possible varieties of policies available; rather, the principal types of contracts will be described and some observations on techniques of coverage, including packaging, and policy applications will be offered.

For more specific information on policy forms and insurance applications, the reader is referred to: *Risk and Insurance*, 2nd ed., James L. Athearn (Appleton-Century-Crofts, 1969); *Risk and Insurance*, 2nd ed., Mark R. Greene (Southwestern Publishing Company, 1968); *Practical Fire and Casualty Insurance*, Hedges and Williams (The National Underwriter Company, 1961); *Property and Liability Insurance*, Huebner, Black and Cline (Appleton-Century-Crofts, 1968), *The Principles of Insurance*, 5th ed., Mehr and Cammack (The Irvin Company, 1972); The National Underwriter, *Fire, Casualty and Surety Bulletins*, Fire and Marine Section, "Commercial Multi-Peril" M-1-Ma-3, and "Commercial Multi-Peril" A-1-A-17 (1971-72); *Municipal Risk Management*, Bernard L. Webb (The National Underwriter, 1971).

VI

Property Insurance

Property insurance coverage may be written in several forms, depending on the properties and objectives of the insured. In its simplest application, the coverage is specific, concerning each building and its contents, each insured separately. Institutions, however, usually seek blanket coverage, involving a number of buildings on one campus or all buildings on several campuses. Such coverage is ordinarily written for the total value of the properties, sometimes with limits for losses in a single incident or location. Automatic coverage for added buildings on the same or new premises may also be provided.

The coverage for contents may, and usually does, provide for some shifting of values from location to location or building to building. A floater policy (inland marine form coverage), to be described subsequently, is generally used to cover items normally shifted from location to location in use, such as audiovisual equipment. However, multiple location and/or variable value reporting forms are available under the blanket non-marine property forms and these may be used where values vary between locations and/or periodically in the aggregate throughout the year. Such forms facilitate the development of adequate insurance amounts, thus avoiding coinsurance penalties at the lowest possible premiums. Value and coverage considerations usually dictate the appropriate coverage for such items.

STANDARD FIRE POLICY

Any discussion of property insurance must begin with the New York Standard Fire Policy, adopted in 1943. This policy has been interpreted by the courts, and its coverages and its conditions are both reasonably well understood and generally accepted. However, one must emphasize that the "Policy" is not an insurance contract or policy in the normal sense. It is simply a statement of the insuring agreement and the provisions or

stipulations, many of which are modified by endorsement. The most important provisions, not usually modified by endorsement are those relating to cancellation, subrogation, actions against the carrier, pro rata distribution, duties of the insured, options of the insurer, appraisal, loss adjustment and the like.

Since 1943, the New York Standard Fire Policy language has been incorporated generally into property coverages providing generally and specifically for a number of conditions. Property coverage for the perils of unfriendly fire and lightning are insured as "fire" insurance. Such policies normally cover all fire and lightning losses to insured properties except that, without endorsement, the standard policy does not n rmally cover war and acts of war, destruction by order of any civil authority except those designed to prevent spread of fire, or neglect of the insured to preserve property at the time of or after a loss. Endorsement for content coverage is usual; however, specific endorsement is required to provide coverage for bills, currency, evidences of debt, monies, securities, manuscripts, and other valuable papers.

The usual property policy is divided into two broad parts, the insuring agreement and the conditions and stipulations. The insuring agreement simply provides that the carrier agrees to indemnify the insured to the limit of the policy on the basis of the actual cash value of covered losses from the named perils. Thus, indemnity is limited to the face amount of the policy. Moreover, the coverage itself, subject to coinsurance requirements, is limited to the actual cash value at the time of the loss, which is in no case to exceed what it would cost to repair or replace the property, or the interest therein of the insured. If the insured wishes to provide for replacement as opposed to actual cash value, the policy must be so endorsed and the premium adjusted to reflect the value at risk.

It may be noted that the policy is applied specifically to the physical property described in the policy itself, or endorsed thereon. In order to evaluate the risk, the values must be identified and related to a certain standard, such as market value, replacement value, or original cost depreciated. Since land and foundations are not generally subject to destruction by fire or lightning, insurers permit the exclusion of such values from the coverage, so long as the face of the policy bears a proper proportion to the total value insured. Some additional comments on this point are made below in the discussion of the coinsurance clause.

The usual property policy contains a number of additional conditions. Among them are the "other" insurance and "contributions" clauses. The first named permits purchase of other insurance while the latter provides essentially that each of the companies insuring the property will share in any loss in the proportion of its coverage to the total insurance covering the same interests and applicable to the loss. It is imperative, as was pointed out in Chapter V, that all policies issued to cover a property be completely consistent in terminology and areas of coverage since, in the event of loss,

each will be applied as if all other policies covered the risk in exactly the same manner.

When perils are added to the coverage, by endorsement, the "apportionments" clause governs the relationship of the face amounts provided for the additions to the basic fire coverage. This makes it possible to achieve a solution to the problem of value equitably and permits adjustment of rates.

In the event that the property covered is mortgaged, unless the mortgage or other underlying agreements provide to the contrary, the interests of the parties may be covered in a single policy, usually purchased by the owner. In commercial or institutional operations, this question is normally covered by agreement between the bond or mortgage holder and the institution. The usual situation provides for protecting the interests of the mortgage holder by requiring replacement of the facility and provision for consequential losses, including interest payments. In many cases, the insurer will make any settlement payments to the mortgagor and mortgagee, jointly, allowing them to determine their interests and the manner of their settlement, by allocation of the cash, or repair or replacement of the property. However, the terms of the bond or certificate of indebtedness and the insurance should conform each to the other.

EXTENDED COVERAGE

The standard fire policy normally covers the perils of unfriendly fire and lightning. It is usually broadened by endorsement to include a number of other perils. Many of the standard property forms, including the institutional package policy, include a list of perils, such as fire, lightning and those noted above, as well as other direct casualty and liability coverages. A standard "extended coverage" endorsement, for example, will provide for damage resulting from windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke. If desired, it may be further endorsed to include vandalism and malicious mischief provided that the insurer accepts these perils. In the cases of a number of institutions, these coverages have been denied.

Earthquake

In some locales one may wish to provide coverage against loss by earthquake. This must be handled either by endorsement or by a separate policy. Prices for this coverage will vary widely by company and location, and the variety of conditions under which it may be applicable are considerable.

Sprinkler Leakage

In many modern buildings, both residential and non-residential, sprinkler or deluge systems have been installed; if so, the insured may wish to provide specific coverage against losses due directly or indirectly to water damage from sprinkler leakage. Such an endorsement covers damage from

leakage, regardless of cause, and in most instances, where the buildings are covered includes damage to the system itself resulting from freezing or breakage not covered by the basic policy to which the endorsement is attached

Flood

Flood insurance, which covers damage the result of overflow of inland or tidal water or the unusual and rapid accumulation or run off of surface water from any source, has not been generally available, except through a federal reinsurance pool The federal flood insurance program also includes the peril of mudslide covered by the accumulation of surface or underground water The rates are subsidized in high hazard areas meeting certain specified control standards and only for relatively low limits. Higher limits may be available at unsubsidized rates, depending on area and circumstances.

If the location and risk potential warrant, it may be wise to query the underwriter concerning the availability of such coverage in the area of the college or university and its costs. If available, it may be written separately or by endorsement into the property policy. Obviously, local conditions will be significant determinants of whether or not to secure the coverage.

BUILDERS' RISK

The institution may find it advantageous when property is under construction to endorse the fire and extended coverage policies to provide for builders' risk usually an all-risk insurance covering the interests both of the institution and of the builder during the period of construction. The underlying contract or contracts will determine the extent of the coverage and the perils insured Such coverage normally is considered to be part of the construction costs paid for by the college or university whether or not it purchases it directly. In most instances the method of purchase is determined by statute or contract, where it is not, the following considerations may help to suggest the approach

When the university is responsible for the coverage, there are two considerations (1) whether to acquire it by endorsement to the present contracts or separately, and (2) whether the contractor can secure it at lower cost than the institution If the insurance record of the institution has been favorable, it may be desirable to buy the coverage separately to avoid affecting its basic experience and the premium on the base coverage. If the experience has been poor, separate coverage may still be indicated since it may be more costly to cover it under the base policy than by separate purchase To determine who should secure coverage, a comparison of the experiences of contractor and institution should indicate the lower cost alternative. However it is purchased, the policy should name both the university and the builder as insureds, as their interests appear

If a single facility is under construction, it may also be advantageous to provide the coverage separately so as not to affect the basic policy. The source documents on financing, including grantors' instruments, should be examined for requirements on this point; in some federal grants, for example, full first-dollar coverage (to protect the federal grant or loan) is required, and many states make the same requirement for state institutions. In some cases, state institutions are required to permit the contractor to purchase the insurance coverages, including bonds, at the expense of the institution. The decision to purchase coverage by endorsement or separately depends on the position of the institution, the terms of its present coverage, legal requirements, and the financial implications of the purchase.

A word of caution: If the institution has included a deductible in its property coverage it will apply to each of the endorsements unless otherwise specified. If, by law or contract, first-dollar recovery is required in construction risks, for example, the institution must either budget or self-insure its deductible to the contractor as well as to itself, or modify the policy by endorsement to provide for the lower deductible coverage desired for this risk.

DEMOLITION

Although property insurance contracts normally define loss to exclude demolition, the value of a property that, after damage, must be removed to meet code or zoning requirements—such losses may be covered by endorsement so that the demolition is covered as a loss in consequence of any covered peril.[1] Optional (to the insured) demolition to permit construction of a new facility is not normally covered in any circumstances.

In construction, either the institution or the contractor, depending on their agreement, undertakes responsibility for the demolition of facilities to be replaced. Whichever assumes responsibility and purchases the coverage should name the other interest as an additional insured. An all-risk insurance coverage normally would be used to protect against possible losses in this process; the hazards covered include liability to third parties as well as to the institution for damage to facilities or persons. The coverage can be written as an endorsement to the basic coverage of the institution or purchased separately, as noted above. In many cases the coverage is a requirement of the contract, paid for by the institution as a part of the total construction costs.

EQUIPMENT AND SUPPLIES

The property insurance, including endorsements, is ordinarily written to cover buildings and contents, exclusive of boiler and machinery exposures incident to the operation of the building. (See below, Boiler and Machinery

[1] The special multi-peril institutional package form includes such loss automatically so long as the result is not an increase in the face amount.

Insurance.) Although the contractual coverage and the terms of its application are identical to those discussed above with respect to facilities, one must note the difference between ordinary furniture such as office or classroom equipment and such highly specialized equipment as computers and electron microscopes which may also be covered. Since the terms of the basic policy, such as the deductible and coinsurance, also apply to contents, one must determine whether the coverages of the standard policy are satisfactory for equipment. If not, separate floaters may be obtained or particular coverages may be endorsed into the policy to provide different terms, values and benefits.

Personal Property Excluded

It should be emphasized that unless a fire liability policy is purchased, insurance coverage is not usually provided for personal property brought to the facility and left there by its occupants.[2] The faculty should be informed that personal property is their responsibility, that its loss or damage by fire or other peril, including mysterious disappearance, is not the responsibility of the institution, and that since the insurance provided by the institution does not cover valuable papers, artifacts, and other personalty, such items should not be brought to or left at the institution, except in the care of the owner. (See Chapter IV.)

As has been pointed out, faculty and research personnel should be encouraged to maintain all original data, research systems, and programming in duplicate, and to make use of disks or tapes, microfilm, or microfiche for storage of original as well as processed data in two or more locations. Adequate records or duplicates of machine systems and programming and other pertinent materials should also be maintained in the hands of the institution, so that in the event of loss basic material resources to continue the work will be preserved.[3]

Some institutions also find it desirable to provide a program of shared responsibility for personalty used in program. In this event, the institution agrees to provide coverage under a university property floater or under the basic property policies, and to charge a portion of the cost to the faculty member. One institution, for example, on supply of a personal inventory, including acceptable values and certified by department chairman or dean as necessary or desirable for the work of the individual, will provide up to one half of the cost of the insurance for such items. One should not lose sight

[2] There is limited coverage ($100 per person and $500 per occurrence) in some of the institutional package forms which include liability for property left in the care, custody and control of the institution.

[3] As noted elsewhere in this *Guidelines*, one may question whether or not research materials, programs, etc. developed by professional staff are the property of the institution. If so, coverage for the loss exists under the property contract to a limited extent. See p. 49

of the security and safety features of such a program When the individual assumes some part of the financial responsibility for the coverage, the inventory of personalty on campus tends to be sharply reduced, and the individual owning such materials tends to exert more diligence in the care of both facilities and equipment. As a result, both housekeeping problems and the chances of loss are reduced.

Scientific Equipment

Scientific equipment may be defined to include all kinds of movable devices from normal office equipment to electron microscopes and computers. Items, the removal of which is easy and the use of which throughout the facilities and off-campus is likely, should probably be covered under a floater of some type. Items that are practically fixed because their weight or bulk precludes removal can normally be listed so that they are covered under the basic property insurance. (See Floaters, pp. 72-74.)

Since the rates charged for covering such equipment will vary widely with both concentration of value by location and susceptibility to damage consultation with the underwriters as well as with program personnel is essential to determine the appropriate location and protection.

Inclusion of a computer in the basic property form will affect the probable maximum loss at a single location and thus the cost of insurance for that location and for the entire property. It is essential to compare costs of inclusion of the items in the basic cover with the cost of separate coverage under a floater.

One should also note that the basic provisions of the policy will apply to the equipment covered on the basic form. If a $100,000 deductible for each loss has been established, it will also apply to each loss of equipment. Thus, if there are a number of losses of laboratory or other equipment, each of which amounts to less than the deductible, none will be covered. (If an established aggregate loss limit is exceeded, [illegible] se, all subsequent losses will be covered, but since such limits are se[illegible] [illegible]perience in mind, it is unlikely that, without a major catastrophe, the lim[illegible] will be achieved in any year.)

If separate equipment coverage is required, a floater that establishes an independent deductible probably should be used. If such equipment is normally used off-campus, as are movie cameras and sound equipment, it may be desirable to establish a special floater for these items, paying the charges for an all-risk, first-dollar, or low deductible coverage; if a federal grant is involved, such coverage may be mandatory unless the institution is prepared to budget and pay for (replace) any property lost.

Methods of determining the size of the deductible and the amount of self-insurance the institution is capable of providing have been described in Chapter V. Since the technique used for handling both facilities and equipment is the same, the resultant base for decision should be the same.

Real difficulty can be encountered only if the terms and conditions of the insurances required are different for each facility and for each variety of equipment, in this event, concurrency must be assured through appropriate endorsements of the policies to provide for the specifics of the coverage. The questions of legislative or program requirements must also be resolved satisfactorily; where the terms required by law or grant vary substantially from the standard, the policy terms should be adjusted by endorsement.

BOILER AND MACHINERY INSURANCE

Standard property insurance explicitly excludes operating boilers and machinery contained within a facility, except for damage to them caused by perils external to themselves. Since accidents involving the use of such equipment are relatively frequent and may do considerable damage both to the equipment itself and to the property in which it is located, users have a real need for a regularized inspection procedure, together with safety engineering and loss prevention programs, to assure minimization of risk of loss.

The scope of coverage under this line has been broadened considerably, as a result of the technological revolution during the past several years, to include all risks and both direct and indirect loss to the property and damage to third parties or to related properties. The standard boiler and machinery policy is a combination of insuring clauses and a number of schedules setting forth the types of machinery, boilers, compressors, turbines, and other operating equipment, which are covered only when they are installed and operating; during installation and while in storage they are normally covered only if so endorsed.

Coverages normally include direct losses to the property, as well as to new acquisitions or replacements; payments made to expedite repair or replacement of the equipment or facility damage, property damage liability; bodily injury liability, and defense and settlement costs, including premiums for appeal and release of attachment bonds. They do not include damage caused by fire, explosion, or other perils outside the property insured. Although the ordinary policy includes bodily injury liability, that may be excluded at the option of the insured; many institutions providing blanket liability coverage exclude it under one or the other of the coverages. Because the coverages provided under this policy are settled sequentially up to the policy limit, excepting settlement expenses, one should attempt to state the values and the limits of potential loss realistically and be sure that they are concurrent with other property covers.

One of the interesting aspects of the boiler and machinery coverage is the inspection service provided under or in combination with it. One of the principal elements of the insurance premium is, in fact, a "location" charge designed to cover the costs of inspection. The insurers in the field devote a considerable portion of total income to research designed to isolate causes of

accident and equipment failure, and to establish practices that will limit or prevent losses. As an indication of the effectiveness of the inspection procedure, one may note many city, county, and state inspections, required in public facilities, are satisfied by the inspection provided by boiler and machinery insurers.

To the complaint that the inspectors are "too thorough," or that they impose requirements on old or depreciated equipment, soon to be replaced, that tend to shorten its economic life, one might reply that it is cheaper to pay for appropriate maintenance than to pay the costs of losses. Because of the importance of university facilities as attractors of people and the significance of accidents involving such equipment to human life, it is imperative that appropriate attention be given to the hazards by the institution, and that the insured so manage his risks as to minimize the possibility of loss.

Great care should be exercised in the definitions used in the policy, since many disputes as to coverage can be eliminated if broad definitions of accident and covered objects are used. One also should remember, however, that the basic coverage for external damage is provided by the property policy, rather than by the boiler and machinery policy. The latter is, in fact, subject to the same conditions and procedures as other property policies and should be concurrent with them. One should not leave to chance the relationships among the parts, since the policies fit together to provide complete coverage.

CONSEQUENTIAL (OR INDIRECT) LOSS

In addition to the direct damage incurred from fire and related perils, one must also be concerned with the consequential results of the damage, such as loss of income. These losses may take several forms. Interruption of program produces an income loss or creates a problem of excess costs to provide substitute facilities, while it also inconveniences students and faculty alike.

The degree to which such losses are significant depends on the size of the facility and the extent of the damage. If the facility involved is a dormitory, for example, and several floors are damaged sufficiently to preclude use, it may be necessary to close the facility for a period of time. If the close-down is relatively short, or if it can be coordinated with a vacation period, there may be relatively little loss of income or necessity for provision of alternate facilities. But to achieve this purpose during the regular operating periods, it is essential that the repair be expedited significantly; coverage for that purpose is needed to meet the excess overtime and other costs of getting the facility back into operation quickly.

If the facility is damaged beyond relatively quick repair, it may be necessary to find an alternate facility to utilize for a semester or similar period. This may involve extra rental, above and beyond the normal charge.

for facilities. It may also involve inconvenience to staff and students sufficient to interrupt or terminate the relationship between the institution and a significant number, producing an additional income loss. Tuition and fees (or other income measure) may be covered by this type of insurance.

Further, if the facility has been financed by a government or private lending agency, and the bond indenture provides for interest payments and repayment of principal on a given schedule, interruption of income will require provision of other arrangements to meet these costs. Here again, business interruption or use-and-occupancy insurance provides a means of obtaining the funds to meet the obligations of the institution.

Franchise Suppliers. In yet another context, the same form of insurance may be applicable. If a university provides food and other services for students through contract suppliers, it normally commits itself to provide space and, in effect, a captive market for the service; it thus becomes responsible to the contractor for a certain rate of income. Since this responsibility is clearly continuous, the contract normally will provide that the occurrence of any of several named perils which interrupts operations will create an obligation on the part of the institution to fund the ongoing costs and, in some cases, profits.

Leased Space

When the institution occupies leased space, the responsibility of the institution for that space is normally stipulated in the lease. Under most circumstances, the lease will require that the user insure the facility, providing full replacement in the event of the occurrence of loss caused by one of the perils named in the lease. In addition to providing other facilities and repair of the damaged property, the institution may also be called upon for rental payments for the damaged facilities. The consequential loss policy, embodied in a use-and-occupancy form with appropriate endorsements, provides an appropriate financial cover. Because other interests are involved, the lease and the property policies should be examined together by counsel to assure adequacy of protection.

FLOATERS

Floaters are examples of inland marine (see Glossary) "contracts" or "endorsements"[4] designed to provide protection against loss of or to items that are in transit, in use off-premises, not fixed as to location, or in the insured's care, custody, and control. In general, they are "all-risk" coverages.

As the field has developed, the areas of coverage have expanded from simple trip-transit or cargo insurance to include large blocks of similar personalty, such as clothing, jewelry, or scientific equipment, and bailee coverages of various types. Broad equipment and fine art floater forms also

[4] Some package policy forms automatically include a minimum provision

have been developed. These specialty coverages are now extensive and are important for certain purposes, of which some examples follow.

Among the problems associated with the operation of a university facility is responsibility for fine arts or other exhibit materials brought to the university for viewing by the students and staff. In a school of art, for example, faculty, student, and alumni exhibits may be regularly scheduled. Similarly, traveling exhibits may be brought to the institution. Such property normally becomes the responsibility of the institution while it is in its care, custody, and control.

Such items, if normal to the facility, may be covered by schedule attached to the basic property coverage in a periodic reporting form. They may also be covered separately under a personal property floater, which gives specific coverage both while the items are in transportation and while they are in the care, custody, and control of the insured, in most cases against all causes of loss. The costs of providing this insurance directly may be relatively lower than if the coverage were merged into or endorsed into the basic cover of the institution, since coverage is limited as to time and as to value on the basis of actual occurrence. Moreover, the basic property insurance normally is limited with respect to the value of such items and by deductible and other restrictive clauses.

It is relatively easy to decide whether to use the standard property or special (floater) coverages. Since, as was noted above, the value of contents of [illegible] covered by the basic property policy is fixed by ratio to the value of the policy or to the policy face, items of high value should probably be covered by a floater, particularly if they are to be transported or used off-campus. Second, the concentration of value per location significantly affects the property insurance rate. When the values are increased significantly at one location, the rate for the entire campus may be affected; in this case, it is to the obvious advantage of the insured to use a floater.

In another context, property covers, unless liability to third parties is endorsed, do not cover personal property in the institution's care, custody and control.[5] Here again, the floater is the appropriate response if the comparative cost is advantageous.

Although computers are frequently leased and, under the terms of the lease, are insured by the supplier, some institutions purchase them or negotiate special agreements covering costs which require that the college or university supply the coverage. As in the cases above, the risks of loss may be covered in the basic property insurance or separately, either as an item of equipment or by floater. Depending on the terms of the lease and the general property constraints accepted, such as a large deductible, it may well be better to treat the item separately through an all-risk floater. Another consideration is the effect on property rates of an increase in probable loss

[5] Limited coverage is available in some package forms.

limits resulting from the addition of an item of such value, which is often as great as that of the building housing it. If the floater is used, special conditions, exclusions, and coverage terms can be established for the separate items without significantly affecting the basic policy coverage or cost. On the other hand, if the institution's equipment budget provision is adequate to secure a deductible and to provide for special conditions of maintenance, and if the property rates or loss limits are not significantly affected by the addition, it may well be cheaper to endorse the coverage into the basic property policy. Coverage for consequential loss and liability to users, however, will have to be provided as separate endorsements if this approach is used.

Data-processing programs and institutional data, as well as private data created by students and faculty, are often stored in disk or tape files for utilization as needed. Although the institution may have coverage for equipment, either by endorsement under the basic policy or by a floater, the insured value, unless otherwise specified in advance, will be the actual cost of the equipment destroyed. Since the tape or disk rather than the material committed to it, is the material item, the insurance value may be wholly inadequate. Moreover, because of poor security or negligence in use or in staffing, liability to users could be created. The insurance coverage must be broad enough to cover the causes of loss and adequate to cover replacement of the materials lost, including research data and programs, as well as any damages incurred.

As a matter of university policy, it will undoubtedly be cheaper and more efficient to provide for duplicate materials in two or more locations to obviate the problem. For data that are in the process of development, however, it may be desirable to agree in advance on a reproduction cost, including the cost of reassembling data, that will provide the means to reconstruct any material lost, and to replace physical equipment that is damaged. Unless otherwise specified, the value of the data represents the cost of labor and equipment that has gone into its construction, not the actual value. Either a liability endorsement to provide for the third-party risk to faculty, students and other possible users, or their coverage as "additional insureds" under the basic property contracts is essential.[6]

The question of coverage for staff personalty is also germane here. Although computer programs and data are personalty, the fact that they are in many cases developed as a part of the staff member's university assignment may change the university's responsibility with respect to their storage or use. Specific endorsements to delineate coverage and methods of evaluating such losses should be added to the policy.

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[6] See also pp. 15-16.

NUCLEAR FACILITIES

Institutions that own or operate nuclear reactors and related equipment, or experiment with radioactive isotopes, either *in vitro* or *in vivo*, can obtain property insurance on the facility, including the equipment, only through two insurers: the Nuclear Energy Property Insurance Association and the Mutual Atomic Energy Reinsurance Pool. In some cases, the coverage is provided directly by issuance of an individual policy, in others, it is obtained by endorsement to the property policy, the primary carrier seeking coverage or reinsurance through one of the two available pools. Because the rate for provision of this coverage, depending on the facilities involved, may affect the rate for the entire campus if it is endorsed to the basic policy, it may be wise to provide an entirely separate all-risk coverage for the facilities directly involved by purchase of independent coverage. Such coverage does not include nuclear damage that results from acts of war or from war itself, which is covered directly through the war reinsurance pool, substantially underwritten and controlled by the federal government.

Many institutions that have atomic energy facilities or make significant use of radioactive isotopes in experiments and teaching also seek liability coverage from the Nuclear Energy Liability Insurance Association or the Mutual Atomic Energy Liability Underwriters. Similar pools exist in other countries; when facilities outside the United States are used or controlled by the institution, it may utilize two or more combinations of carriers to provide the coverage. Such coverage would be different from that offered by a single policy managed by a domestic insurer and reinsured internationally in that two primary policies would exist, each on a different exposure.

Although the risk in this area is compelling, the safety devices and precautions applied to the use of such equipment and products have resulted in infrequent and relatively small losses. In most instances, unless it has a hospital, the institution will not need nuclear energy liability coverage, since the insurance of the seller of the isotopes covers liability to any agency or person utilizing its products and damaged by them. It is desirable however, to maintain residual liability coverage to provide defense, if nothing else, in this area.

Many, if not all, of the constraints established in the basic property coverage are also applicable to the nuclear coverage. The insured must thus make sure that the valuation, coinsurance, pro rata, and other insurance clauses are identical with those for nuclear coverages.

OTHER PROPERTY COVERS

Many institutions use self-propelled vehicles of many types in maintenance, experimentation and service activities, including ocean-going tugs, fleets of automobiles, and aircraft. Each of these types of equipment are

ordinarily covered under separate policies written specifically to cover the property and the hazards to which it is subject.

Automobile Coverages

Normal institutional automobile property coverages include collision, subject to a deductible; comprehensive, also usually subject to a deductible; and perhaps institutional property, road service, and transportation. The last named coverages will normally be excluded from the usual fleet insurance plans because it is cheaper and more efficient to cover such institutional property and expense by floater or self-insurance, if it is covered at all.

The basic deductible is a significant item affecting rates. Depending upon the size of the fleet and the average unit value, it may well be worthwhile to self-insure the entire property risk, both comprehensive and collision, subject to a stipulated maximum aggregate loss in a major catastrophe such as fire in the fleet garage. For an institution with only two or three motor vehicles, used principally by the officers of the institution and the plant department, such arrangements are neither feasible nor practical, but the same property approach to establishing the deductible used for buildings and equipment should be applied. The use of an annual budget item for maintenance and repair, crediting any surplus to a cash reserve account, may make it possible for even the relatively small insured ultimately to operate as a self-insurer in this area.

Aircraft Insurance

One or two aircraft hulls may be incorporated into the property insurance agreement by endorsement, or separately covered. When the numbers are small, it is probably more efficient to underwrite the entire risk, including liability to staff, passengers, airports, and the general public under a single specialty coverage. Where a large-scale fleet is maintained for research or other purposes, the general comments on fleet automobile coverages apply. For example, hull aircraft insurance may be included with the liability coverage, the latter being by far the most significant potential loss producer and thus the more costly element in the coverage. Moreover, if there is a significant number of vehicles or air hulls, a common blanket coverage may be provided on an all-risk basis. But in this case the need for large liability limits by virtue of the concentrated human and equipment values is clear.

Alternatively, the coverage of air hulls may be provided by separate policy or be self-insured. Particularly where the numbers are large and maintenance is provided by the institution's ground crew, such expense may be budgeted subject to a high annual aggregate deductible to cover such catastrophes as near total losses the result of hurricanes or fire in the hanger.

SPECIALTY COVERS

The reader should be aware of the many specialty coverages that may be obtained for special risks. If, for example, an institution adopts a policy of

making its facilities available for public use, it must be aware that its exposures and its insurance needs have been increased. To make space available for use by a convention of an organization with a reputation for property destruction or physical violence is to accept an exposure that may not have been contemplated in the original insurance bargain. Even if its present coverage includes any damage incurred in such meetings in the first year, from that time the rates for the entire campus will be adjusted to reflect the new exposure. To establish a policy of open facilities is, thus, in effect to put one's own insurance bargain on the line. Good judgment suggests that the additional risks should be shared with the proposed users of the facility.

One approach to this problem is to require, as a matter of institutional policy, that all outside users and their proposed usage be evaluated by the institutional risk manager; and when conditions suggest possible conflicts with basic policy and damage to facilities or persons, to require that an additional and separate insurance coverage be provided by the user agency for the event. To assure protection, this should take the form of an all-risk coverage, including first-dollar property (direct damage) coverage, assuring the institution of recovery in the event of damages to its facility, as well as third-party or liability coverages to protect itself and other users from damages by third parties in the course of the event.

The relatively high costs of such coverage may discourage use of facilities by such groups, with a resultant bad press for the institution. It thus behooves the risk manager to work with the public relations personnel and general administration to create a sound public relations position. But removal of such special additional hazards from the general coverage will have the effect of minimizing exposure and cost while establishing an attitudinal position for the institution which suggests effective risk management and property control from an underwriter's viewpoint.

VALUATION FOR LOSS AND CLAIM ADJUSTMENT[7]

One of the principal problems associated with property covers, which has been touched on in Chapters IV and V, is the assignment of value. An insurance policy is normally written, unless otherwise endorsed, to provide for the actual cash value of the property lost. In the event of a loss, therefore, an inventory of all property must be presented, including both normal furnishings and specially scheduled equipment, by locations. This inventory should contain value data, including a description of the technique used in arriving at the values. In nearly all cases it would be advantageous to have historical cost data, such as purchase price, date of purchase, depreciation rate, and major rehabilitative expenditures, included in the tabulation. Although most institutional buildings are depreciated, since schools are not

[7] See Chapter IV for the types of data that should be available and methods of appraising the inventory.

taxed and are supported in practice by tuition charges, appropriations, and contract payments, which include use allowances, it has not been necessary to maintain current value data. Moreover, in most instances, the objective of the institution is to maintain its plant for service, not necessarily the present plant *per se*. As a result, although facilities may by policy be restored from time to time, the value needed is usually replacement of space rather than actual or some future value. In insuring facilities, the objective should be to insure replacement of space, with exceptions noted. Thus, space should be evaluated on the basis of current construction costs.

Because of the wide variance in construction costs, evidenced by the current ranges of bids for construction, it is evident that considerable differences will result from a variety of causes, including market environment. If it is proposed to insure replacement value, the objective should be stated and both the actual cash value and the replacement value of the facility and of equipment should be indicated, with sufficient latitude to cover market changes for at least a year.

Without inventory and appraisal data, adjustment in the event of an insured loss is nearly impossible. Reconstruction of the value of buildings and contents and negotiation of values not only delay settlement but also significantly delay the process of rehabilitation, maximizing rather than minimizing losses. In addition, the existence of such data will not only simplify underwriting but, if experience proves it to be credible, it may significantly reduce the cost of risk (both rate and total premium) for some or all types of property.

Coinsurance Application. The significance of value data is highlighted in a number of contexts, but in none more clearly than in coinsurance requirements. If, for example, the insured has undertaken a policy with a 90 percent coinsurance clause based on replacement value at the time of the loss but has purchased insurance equivalent only to 60 percent of the current replacement value, if a loss occurs that exceeds the deductible but is small enough to be within the insurance limit the company's settlement will be in proportion to the relationship between the amount of insurance in force and the coinsurance value; it will pay two thirds of the actual loss, less deductible, rather than the actual loss. Thus, the insured institution would receive only two thirds of its insured loss, however adequate its insurance might have seemed. The insured must understand the effect of coinsurance requirements on coverages.

Pro Rata Clause. If the insured has elected to cover property, including fixed and movable equipment, under a blanket form in an effort to simplify coverage, or has purchased several policies to cover a property, the pro rata distribution clause will have little significance as long as the values covered approximate the actual value at risk and the policies are concurrent. If however, the amount at risk significantly deviates from the sum of the values, the insurance will be distributed on a pro rata basis relative to the adjusted

total value after deletion of the coinsurance effect. In the event of non-concurrence the policies will each pay its share of the pro rated total on the theory that all policies cover in the same manner as the one which is being adjusted.

The purpose in restating these problems is to highlight insurance principles as applied in the property field and to assure that the technical problems of the policy, its terms, and its application are sufficiently understood to assure that the coverage is as it is desired to be. In view of the possible differences, it is easy to understand the need for counsel, risk manager, agent, and broker to seek the best possible arrangement for the institution.

SAFETY INSPECTION

Finally, the importance of regular safety inspections and procedures should be reemphasized. Appropriate loss prevention engineering is the joint responsibility of the insurer and the insured, and one of the key points of evaluation in any insurance proposal is the safety program of the insurance company. Regular inspections, training sessions with personnel, and investigative work with staff and students designed to ferret out the risks and to take steps appropriate to their control are essential. The maintenance of full-time property inspection personnel on the institutional payroll or, for smaller institutions, assignment of the responsibility to plant personnel, is vital from the standpoint of both the insurer and the insured. Both are more interested in the prevention of loss than in funding losses that have occurred.

There must of course be balance in this approach. Condemnation of facilities simply because they are old or do not have sprinkler systems that meet maximum loss prevention specifications is not always necessary. On the other hand, location of programs and equipment with respect to safety and the training of personnel in loss control, as well as loss prevention, are desirable both from a financial and a public policy viewpoint. The risk manager's job is basically that. He must understand the potentials and the capabilities of engineering—human and physical—and apply them effectively and economically in every situation. For the remaining exposures, he must seek commercial insurance, budget for losses, or provide for the development of a self-insurance program that will give him the financial means to deal with those risks it is not possible to eliminate or to reduce to manageable proportions.[8]

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[8] The reader is referred to the bibliographic reference at the end of Chapter V for more detailed information concerning insurance coverages available in specific circumstances. Particular reference is made to the *Fire, Casualty and Surety Bulletins* and Bernard L. Webb, *Municipal Risk Management*.

The purpose of this *Guideline* is to highlight the risks and to suggest the principal lines of insurance which are available, together with some of the constraints and tolerances. It is not to outline in detail policies or provisions with respect to specific coverages.

VII

Casualty and Liability Insurance Coverages

This chapter deals with the broad area of casualty (other than fire and related peril) coverages with emphasis on liability insurance because of its developing significance to colleges and universities. Workmen's compensation, direct accident, and theft and fidelity coverages, as well as bonds, also are treated briefly. As in the preceding chapter, the content is not exhaustive. It is designed only to highlight risk management and insurance coverage problems and to suggest some techniques for solving them.

A relatively new area of risk from the standpoint of institutions of higher education, including hospitals, is third-party liability. In general, the statutes hold that each individual may be held to be responsible both for his acts (or failure to act) and for those of his agents. The terms of responsibility are set in some cases by statute, in others by common law, and in still others by contract. In essence, each individual is expected to behave as a prudent man would, recognizing both statutory and socially imposed definitions of customary behavior, an individual (including colleges and universities) may be adjudged responsible for damage to others that results from his failure to act in this manner.

LIABILITY AND FINANCIAL RESPONSIBILITY

Liability is based upon responsibility and may stem from any of three broad conditions. First, it may be created by criminal behavior or acts by one party against another. In this instance, liability arises from violation of law or public policy and any resulting injury to other parties. Second, legal responsibility may be established by a contract that also determines the basis for determining financial liability, frequently including a measure of damages.

Third, and increasingly common, are tort liability situations, in which the negligent actions of an individual (personally as well as in an institutional context) may give rise to bodily injury, including injury to such intangibles as

reputation or income expectations or injury to property. The act, or its absence, that gives rise to the injury is known as the tort, and the suit is a civil action in equity for financial redress.

Tort liability is not new. Its increasing usage for a wide variety of types of personal injury situations gives it real significance to higher education, the services of which are now offered to a significant portion of the population. Moreover, the professional service aspects of program make it particularly applicable as precedents in this area are set by actions initiated in some cases. Although not clearly subject to action in the legal responsibility-liability context, as yet, the fact of potential application needs examination in the context of possible impacts. In addition, despite applicability, charge does not necessarily prove legal liability. Successful defenses are being developed and relatively risk-free actions are possible by appropriate engineering in many cases.

The major problem of institutional management in protecting itself and the institution against such actions is determination of potential loss values. Since in most cases there is no specific measure of value, one can only speculate as to the amount of damages and thus the amount of protection needed. One who is damaged in any way by the negligence or professional misjudgment of an instructor that results in bodily injury in classroom or laboratory experimentation, for instance, or whose personal reputation is impaired through use of his case in classroom discussion, has the basis for a tort action. Only a jury can decide the question of loss and extent of damage. The extent of the claim would presumably bear some relationship to the costs of medical service, the value of lost time, or the change in the expected worth of the individual before and after the incident. Since one cannot really measure these items even in specific cases, it is even more difficult to appraise the potential losses and the amount of insurance needed. That the need exists is increasingly apparent from an examination of the case reporting services that summarize actions filed and findings and judgments awarded in these areas.[1]

Immunity of Universities

Historically, public institutions, agencies of the state, and scientific, religious, eleemosynary, and educational institutions have been immune, by statute or judicial precedent, from attack on grounds of liability, except contractual and criminal. By legislative amendment and judicial action, this position has lately been eroded; at present, only a small number of states still claim sovereign or statutory immunity for state institutions, and statutory immunity applies only to a limited extent to other educational, charitable, or similar facilities.

[1] See, for example, The National Underwriter Company, *Fire, Casualty and Surety Bulletins*, Cincinnati, Ohio

With the diminished applicability or use of institutional immunity, one must determine who may be responsible, and thus liable for damages, including punitive damages, in an institutional situation. In case law and precedent, the corporate institution, as the agency that has assembled the program or service and has acquired the facilities and organized them for the performance of a program, has primary responsibility for incidents occurring in association with its operations. Within the organization, however, there are a large number of semi-autonomous departments that employ professionals for their expertise in particular areas and provide the programs by which they render service to students, the public, patients, or whomever. Although the institution is responsible (and, theoretically liable) as long as it directs the performance, the semi-autonomous state of program segments and experts may bring into question the position of the expert as an agent of the institution. As a result, the employee as well as the institution may be held to be legally liable, in part or in whole, for a specific action or its absence, in that the action could have been outside the employee's authority and therefore not directed by the institution. A separate action or actions may have to be filed to establish fault or negligence and legal responsibility in any particular incident; the case finding or jury decision thus establishes both the line of responsibility and legal liability.

By statute and charter, institutions are organized under a public or private board that has basic responsibility for policy and general oversight over their operations. Historically, responsibility for program judgment and operations has been vested in the corporate body; trustees or regents were thought to be outside the realm of legal liability, having only loose judgmental responsibility for policy and program direction. In recent years, however, actions have been initiated or threatened by trustees or regents against members of their own group, as well as by the public, students, or employees against individual trustees or the trustees as a group, for their failure to exercise prudent control or to direct program in accordance with public policy, or for failure to act responsibly in such matters as timely investment of resources, development of new programs within appropriate university guidelines, and discrimination in employee or student selection. These areas of responsibility are being tested, in some cases in such fashion as to involve the trustees or regents not only as agents of the corporation but also personally. While counsel have generally advised that the positions are defensible, the existence of actions suggests the need for reexamination of policy and position.

To anticipate such situations as are described above, the policy of the college or university should make its position clear, providing both a basis for defense and appropriate insurance covering the institution, its governing board and its staff, both as its agents and as additional insureds.

If immunity is claimed as a defense the situation may be different, since although the college or university may be immune, an individual staff

member may be independently liable if he exceeds his authority or acts outside his function as an employee. Additional difficulties for both individual and institution arise from the fact that the decision as to defense is often made by the attorney general or other authority; the staff member (or his counsel) may or may not be included in the decision making, depending on the case. Clearly, the interests must be joined if the staff member and the institution are both to be protected jointly and reasonably from actions in this area.

Types of Liability Actions

Bodily Injury. The most common liability action has been associated traditionally with responsibility for property operation. As noted, the normal risks of accident or incident arising out of negligence, or poor maintenance, relate to physical injuries incurred in the use of facilities. Injury from a fall on the stairs, tripping on the elevator threshold, or falling on a cracked sidewalk suggests negligence in maintenance, to the extent at least of failure to provide proper lighting, proper warning, or security measures designed to prevent accident. Physical or bodily injury from such incidents results in medical costs, and may cause loss of income. In such situations, a tort action may be undertaken by the injured party to recover his losses and, if the liability is established by court action, a financial penalty, representing out-of-pocket costs, loss of wages, compensation for pain and suffering, and in some cases punitive damages, may be imposed. Similar situations arise in the operation of automobiles and aircraft, as well as from use of the fixed premises of the insured. In each case, a loss and legal liability are alleged and, if upheld by judicial process, financial costs may be imposed.

Property Damage. Responsibility for property damage incurred in such incidents also has been associated with such actions. In an automobile accident, for example, in addition to injury to person, there is nearly always damage to the vehicle. Where responsibility is established, legal liability follows, and a claim for recovery of the losses may be expected. Damage to clothing, other personalty, buildings and other objects falls in this area, where legal liability is established, there is a basis for recovery. In addition, when the institution assumes responsibility for care of personalty, as in a parking lot or checkroom, there may also be responsibility as a bailee for damage to or loss of such articles as are accepted.

Personal Injury. A recent trend in American society has been to require settlement in an increasing number of incidents involving injury to person, ranging from actual bodily injury to inferred injury to such intangibles as reputation, income or professional expectations. Injury also may be alleged from copyright or patent infringement, and false arrest. As a result, both administrative and settlement costs of legal liability have been growing at a rapid rate. Financial liability for costs on personal injuries as a result of malpractice, professional judgment, slander, deprivation of privacy, and so

on, is of growing significance to institutions; as the courts extend the areas in which personal injury can be established, the potential is further magnified. Even in the states where immunity is now a matter of constitution or statute, incidents that necessitate investigation and defense are multiplying.

Because all the incidents described above require a judicial finding or adjudication of claim, or negotiation on the basis of precedent, each institution must decide its liability status in its local environment and adopt policies, including insurance coverages which deal directly with the potential as it is viewed. Where it is determined that such actions are reasonably a potential, policies must be implemented. Appropriate supervision of the premises and activities that take place in them should be established routinely and appropriate fact-finding and legal as well as claims counsel provided to interpret the findings as to whether or not there was fault or negligence on the part of the institution and, if so, to negotiate a settlement. One should be aware that the costs of settlement frequently exceed the out-of-pocket cost of damages incurred by a considerable amount as a result of the assessment of penalties, payments for pain and suffering, and the like. Sometimes because there is little basis for arriving at a settlement amount, the financial judgment bears little relationship to the loss. In some cases, while it will be difficult to establish liability (or it may be improperly determined), either appeal or settlement will be costly and, unless provided for, will use institutional resources. The basis for deciding to insure the potential loss must consider all of these areas of cost comparatively with the costs of dealing with them individually and independently.

Policy Limits and Forms

In response to the need for defense and claims settlements for third-party injury, a market basket of liability policies has been developed. As in property risks, the risk manager must evaluate the situation of his own institution and take appropriate steps to provide for managing the risks to which his institution is subject, including safety engineering, defense and claims settlements directly or by purchase of insurance. In its simplest form, a liability insurance policy covers public liability related solely to operation of facilities up to a stated limit. Such a policy, up to its limits, assumes financial responsibility for defense, including investigation, trial and settlement of claims. It is customarily written with two limits—one per individual, the other per incident, *e.g.*, $100,000-$300,000. In this instance, it would cover claims of up to $100,000 per individual injured and a maximum of $300,000 for all claims related to a particular covered incident. A number of variations in form and coverage will be discussed in the following pages.

One must recognize that the liability policy is usually written to cover specific exposures, such as bodily injury and property damage related to the university facilities and program. Physical injury on campus, for example,

would be covered by the standard policy, while injury in education resulting from professional judgment or in care (*e.g.*, psychological clinic) would not. Such other exposures must be covered by endorsement or by purchase of special comprehensive or all-risk policies; dollar limits must also be adjusted to provide adequate financial coverage on an incident basis at least. A $100,000 single-limit institutional coverage will usually provide defense against covered claims on a continuing basis, but when reserves (estimates of claims payments likely) of more than the aggregate limit, $100,000 in this case, have been established and claims for that amount are paid, the policy is exhausted. The risk manager must therefore determine the amount of liability claims likely to be initiated in the course of a calendar period such as one year, and provide a dollar limit capable of meeting that amount or more; or he must establish, by endorsement, the principle of automatic reinstatement, subject to some maximum limitation.

Liability policies, as noted above, provide coverage for a specific time period. While this is true, the coverage for that time period continues for whatever legal period is required. Thus, an alleged injury which comes to light four or five years after the point of injury, if legally allowed, would be placed against the policy in force at the time of the incident. Moreover, the time of maturity of claims filed may cover several years, involving filing of claim, investigation, trial and adjudication. Limits must be set with this factor in mind, since a policy normally cannot be revised upward after the period to be covered has expired.

Policies may also be written, as was pointed out, with several different types of limits. The coverage may be written with an individual and incident loss limit for liability with a separate property damage limit and an accumulative limit for a specified time period. In each event, claims will be defended and paid, subject to the individual incident and cumulative limits for the time given. Here again the principle of automatic reinstatement may have to be incorporated to assure maintenance of the coverage.

Automatic reinstatement means that when some part of the total or aggregate limit of the liability coverage has been placed in reserve against claims, an additional amount will be added to the face of the policy and an additional premium (at the same or a higher rate, depending on the company and the expectation) will be established. Ordinarily, the costs in this situation, assuming utilization of the reinstatement clause, will be approximately the same as costs of purchase of higher limits to begin with, although the rate may rise as the original expectations are exceeded. The expense loading also will be somewhat higher, thus dissipating some of the advantage of setting the lower limit initially. On the other hand, if the limit originally established is not exceeded, the original premium establishes the liability cost for the period.

Another approach is the purchase of additional policies covering the excess over the base in any of several ways, three of which are described here.

Umbrella Coverage. Once an evaluation of the potential liability loss experience has been established, an institution must realistically treat the possibility of catastrophe. In a college, the collapse of the stands on the football field during a game, the crash of an airplane carrying students and faculty, or a riot on campus, each unlikely but possible, presents the chance of a massive loss. To deal with these, the institution may seek a blanket umbrella policy that provides an excess liability coverage of some specified amount over the general, automobile, and aircraft liability policies. The premium for the blanket umbrella is ordinarily substantially lower per dollar of coverage than for the initial layer or basic policy, which is likely to meet all costs of loss, including claims administration. If the basic policy limits purchased have been realistic, the premium for the umbrella should be relatively low, since it represents only expense loading and a calculated compensation for assumption of the large potential, but unlikely, losses.

Excess Coverage and Layering. An alternative to the umbrella approach is an "excess-of-loss" coverage for an additional amount over and above the basic policy limit; the coverage normally parallels the underlayer in all respects, unlike the umbrella, which is usually all-risk, simply providing additional protection beyond the primary limits. Since the basic policy provides management of the risk, defense, and claims adjustment, the excess coverage is involved only when the basic layer is exhausted. Concurrency is vital, since differences in effect may result from small differences in wording.

Another variation is layering, in which, instead of writing two coverages, a basic and an excess, the risk is divided horizontally several times, each successively higher horizontal layer being awarded to a different carrier. The method is the same, and the constraints and requirements are the same, except that the numbers and limits are increased. The usual reason for such a program is cost, the basic layer being set to cover the expected losses, and the excess layers to provide for catastrophic occurrences.

Occasionally a large basic risk is undertaken by a syndicate. In this case, by treaty, the companies involved in the first or basic layer agree to share in the proportion of their policy limits to the total covered by the basic layer. The company that organizes the group and puts together the syndicate also manages claims administration, loss control activities, and the like. Such a syndicate normally results from the presentation of a risk so large that no single carrier is able to accept it without assistance; the approach differs from reinsurance in that the liability is joint, and all share in it with the full knowledge and the concurrence of all parties, whereas in reinsurance the liability of the primary carrier only is presented to the insured, the arrangements for sharing in the payments of the losses being made among the carriers. The syndicate members may be reinsured individually, in addition to participating in the basic cover, thus involving additional or "hidden" carriers and capacity in the program. Again, concurrency is essential, and every care should be exercised to assure it.

Self-insurance and Layering. Another approach involves the use of self-insurance and layering. The large institution may find it advantageous to assume some responsibility for each liability loss, either directly by sharing on a pro rata basis in the basic loss costs, including defense, or by establishing a deductible, including defense costs up to a specific limit. A typical arrangement, and one which is effective, provides for assumption of a percentage of the first layer, for instance 25 percent of the first $100,000 of each loss, with pro rata sharing of all defense and investigation costs. In the event of a claim, the institution and the insurer are jointly liable, in proportion as the risk assumed bears to the first layer of coverage for any costs incurred and settlements paid. The arrangement may be made on a per-claim, or per-time basis. In the per-claim agreement with an annual limitation (or aggregate stop-loss) on the insured, the layer is so written that the insurer will be involved directly in negotiating nearly all, if not all, losses. The insured will supply information and contribute to all costs of claims administration.

Almost the same end may be achieved if a relatively small first layer of coverage is provided by self-insurance, for instance, $10,000 per loss, $25,000 per incident, with a $250,000 aggregate per year, with commercial coverage for additional loss layers on a per-incident and aggregate basis carrying the liability of the institution to whatever limits seem appropriate, given the circumstances.[2] In this case the insured does his own claims administration, informing the carrier of incidents and actions as they develop. A judgment as to severity determines whether or not the carrier will involve itself in each claim. In some cases, the institution hires its carrier to administer all claims automatically for an annual fee or at cost. The carrier will accept this procedure only if it agrees to the administrative procedures of the university for claims.

Special Responsibilities in the Student Area

The college or university is responsible for providing a reasonably secure environment for education and research. Its policies and regulations, as well as its program plans and their implementation, should meet the test of prudence: that due care and diligence has been exercised in establishing program and providing for its implementation. It is not necessary to prevent all accidents or to stop activities in which there is risk, rather, the institution must exercise those controls prudence requires to assure minimum risk and provide all participants, and those related to them, with full information concerning the risks and their implications. For example, when in urban situations the practicum may involve a number of risks to the student, he should be informed of them, and the program should be so designed as to

[2] As a rule of thumb, where a comprehensive blanket (all-risk, all-location) policy is used, a per-incident limit based on the average probable loss with an annual limit set at a level of frequency per annum times the incident limit is probably most appropriate.

minimize them. (See Chapter IV.) Similarly, on campuses where student unrest and demonstrations create an injury potential, security and other precautions need to be taken and information concerning the potential should be supplied to all parties. The student may also be expected to behave prudently; his failure to do so may subject him to injury or personal liability as well.

One should seek opinion of counsel as to the responsibility and financial liability of the college or university to students and student organizations in the local environment. In some recent instances, counsel have held that, unless student organizations or groups were chartered by the university and governed by it, they are not the responsibility of the institution. If the institution wishes to assert this position, it should be made clear to all participants that no responsibility or liability is assumed for these operations. The student group charter and the membership roster, as well as the student handbook, should clearly define the position of the university and the organization with respect to such activities. Similarly, the application for admission to the institution, on any level, should probably contain a waiver of liability for such activities by the student and his parents as a condition of enrollment, although it is generally held that the legal waiver of responsibility based on informed consent does not constitute an escape from liability. Some residual liability may thus inure to the institution despite the legal precautions.

It is for this reason that liability insurance is purchased. When the university or college program is covered by a comprehensive or blanket liability policy, it should contain an endorsement covering the residual of student activity risks which, as a policy matter, have been transferred to the carrier. Several institutions are currently considering a flat student fee to provide a direct accident and sickness cover to all members of the student body which, incidentally, provides benefits for losses arising from the operation of the institutional program, possibly reducing the pressure for the assumption of institutional responsibility for such costs.

LIABILITY COVERAGES

The breadth of the responsibilities and the resultant risks in an institutional operation require either the establishment of coverages for each of the many possible types of liability or adaptation of a general liability policy by endorsement to provide for products liability, slander, false arrest, professional liability, discrimination, agency, and so on. Such a general policy normally seeks to provide coverage for all liability areas except for property in the care, custody, and control of the insured, assumed liabilities, and the professional liabilities, such as malpractice. Discrimination would ordinarily be excluded from coverage in practice unless it was unintentional, since by its nature it would result from the performance of an illegal act.

A comprehensive general liability policy ordinarily provides coverage up to a specified set of limits; it might also be endorsed to provide for medical payments settlements to those willing to accept these payments for a waiver of liability and in lieu of all other damages.

Additional endorsements may be obtained both to extend the coverage to specific additional risks and to give the employee in an agency situation personal protection. Other possible endorsements include an agreement with the insurer to permit use of immunity as a defense against the action of a third party and to extend the coverage to contractors or other third-party agents of the insured, such as a food service franchise holder. Excluded from the coverage would be risks such as automobile and aircraft liability, except to the extent of any claim in excess of the basic limits provided for these accidents by separate coverages.

A number of institutional package policies contain a comprehensive bodily injury and property damage liability coverage. Minimal personal injury coverage for such program hazards as deprivation of privacy or defamation of character also may be included. Several institutional liability package policies have been developed. These generally follow the description of the comprehensive policy above and most may be endorsed for additional exposures.

Employer-Employee Agency

The relation of the institution to its employees is vital to its essential functions. An institution of higher education is organized to provide educational services, including a variety of experiences in training through the application of particular skills and knowledge of experts in classroom and research activities. The program inevitably creates possibilities of slander, copyright violation, defamation of character, and professional liability arising from the development of and presentation of materials (products or services) such as building plans, psychological counseling, testing, and from the practicum, among others

The college or university that has assembled the staff and offers a program for general consumption is obviously responsible for assuring that its program meets appropriate standards and that staff members are qualified, appropriately trained, responsive to the program needs, and responsible for their professional acts. At the same time, the institution cannot supervise every act of its professional staff, nor can it, as a matter of institutional policy, anticipate all the situations in which its staff members will find themselves. The institution can establish general policy guidelines for program, through administrative delegation of powers to deans and department heads, and to some extent exercise control over the activities and judgments made by the staff in the execution of its program duties; it cannot, however, preclude the possibility of damage to third parties from the implementation of the judgments of individual staff members.

There is always a question of whether or not the staff member is proceeding within or outside his authority, and thus whether or not he or the institution, or both, are responsible for his actions. In the absolute agency situation, the institution is clearly responsible and is financially liable for the acts of its agents. But there are many gray areas in which the college or university may deny that an act, or the lack of it, falls within institutional direction. In this event, in effect, the institution is attempting to transfer responsibility, and hence liability, to the individual staff member.

Since, in normal sequence, the injured party will take action against the college or university, the faculty member, and any others who may have been involved, the question of liability is usually resolved by the court. In the event that the individual rather than the institution is found to be responsible, the question arises whether or not the institutional liability coverage applies to the individual. To anticipate this situation, it is appropriate that the institution provide coverage for all employees as a class of additional named insureds under all circumstances except when, for example, the damage is a result of an illegal act.

On the other hand, the college or university may wish to take a rather narrow view of its liability situation and to define each individual circumstance in terms of the sequence of events, forcing a liability finding individually in each case. In this event, if a faculty member is not initially joined in a liability action, the institution may plead for his involvement as an additional respondent to the action, in effect indicating its desire to transfer the responsibility to the individual. In this event, the problem is to establish responsibility, since coverage follows from it. If the institution proceeds in this fashion, it is to be expected that the faculty member will take an adversary position, intending to establish that he acted as an agent of the institution. Such an action would have to be resolved as a part of the tort proceeding. Adequate protection for the faculty member in this context would require independent insurance coverage. From the standpoint of obtaining and maintaining reasonably sound staff relations, it is probably wiser to provide the broadest possible insurance coverage, involving both the institution and its professional staff members in a common policy and providing for common defense and settlement.

Malpractice

Malpractice was originally thought of as occurring primarily in patient care; in the university, it normally occurred in a hospital or medical or dental college. More recently, the concept of malpractice has been broadened to include not only nurses, student interns, residents, and many others, such as therapists, who provide patient care, but persons engaged in psychological, vocational, and educational counseling and treatment, in which defects of various kinds are treated and remedial conditioning is undertaken by a university staff member.

Malpractice responsibility for the institution also has been broadened to include the injuries by third parties that result from acceptance of the counsel of representatives of the institution as they perform their university functions. A situation of this kind might occur in a student health service that provided birth control advice, recommending specific agencies or institutions as sources of such care. Because of the wide variety of circumstances that may give rise to claims, the malpractice coverage, whether by separate policy or by endorsement, should be spelled out clearly and written to include comprehensively all areas in which an imputation of malpractice (institution or staff member) could be established, regardless of the specific program. The risk should also be covered under the errors and omissions policy or by such an endorsement to the liability policy.

If the college or university manages a hospital or medical facility in conjunction with the medical, dental, allied health sciences, or other health-related educational institutions, the malpractice and products liability coverages are of great importance. They may be provided by endorsement to the comprehensive institutional liability policy, or separate policies may be written. A joinder of interests, institutional and personal, is desirable to minimize cost and maximize the effectiveness with which a defense may be mounted. It is important to include the often neglected coverages of the auxiliary staff, such as nurses, technicians, volunteer workers, and students involved in providing care, at or under the direction of the institution, any or all of whom may be joined in an action.

Products Liability Coverage

Products liability coverage is essential to protect the institution from damage resulting from the dispensing of drugs, the placement of heart valves, pacemakers, and other prosthetic devices, and the giving of blood, transplant organs, and the like. Because the risks may be considerable, for the protection of the college or university and its staff a major safety education program is necessary, including development of adequate procedures and documentation to demonstrate that "due care and diligence" was exercised in each instance. As in the property insurance area, a carrier should be selected, at least in part, on the basis of its activities in safety inspection and training or development of programs designed to reduce the chances of incidents or to provide an adequate basis for defense when they do occur.

Professional Liability

Professional liability insurance covers a broad area of risk; it is, in effect, coverage for incidents arising from the exercise of judgment in professional performance. It is concerned with the application of particular professional skills through programs and planned demonstrations used in the classroom or research project or as a part of the extracurricular program of the institution. Professional responsibility imposes financial liability on the

faculty m. ., administrator, or staff member, and on the college or university, both in relation to the student who is a participant in the program and to the clientele–patient, client, or experimental class–subject to or participating in the program. Charges of personal injury resulting from physical violence or mental or emotional trauma, or other claims resulting from the exercise of professional judgment, are being initiated in sufficient numbers so that the institution, to protect itself adequately, should see to it that its liability endorsement provides specifically for these risks. The errors-and-omissions coverage also should include program risks and should cover both the institution and its staff members collectively, as well as individually as additional insureds, and endorsed to provide fellow employee coverage.

Errors and Omissions

In the broadest sense, regents, trustees, and general administrative officers have responsibility to the institution and to the public for the general development of policy and the supervision of the institution, for their acts or for their failure to act in the proper enunciation of policy, and in their administration of it. Although institutional counsel and state officials have generally held that liability of trustees and regents is difficult if not impossible to establish directly, enough cases have gone to court to suggest that there may be reason to insure the hazard to provide, if nothing else, a proper defense. This is not to say that liability, *per se*, will be found to exist. It is to indicate, however, that all policy level officials, from the regents or trustees to the elected officers, may well have to defend themselves and the institution against challenge with respect to policy and program. To this end, an "Officers and Directors Errors and Omissions Coverage" or endorsement to the general liability policy covering the interests of the officers and directors, including the fellow employee coverage is essential. Such coverage should be in addition to employee fidelity coverages and/or bonds. Both should be endorsed to indicate the existence of the related coverage, and, in the interests of efficiency, some prior agreement as to the areas of coverage probably should be developed by the insurers.

In addition to the provision of coverage for employee, officer, and trustee liability and fidelity, each institution should be aware of the need for policy documentation in each of the principal areas in which public trust is involved. Counsel's opinions should be solicited and guidelines for action should be incorporated into the institutional manual of procedures. The officials should also be aware that conventional insurance coverages do not apply, even though specifically mentioned, if the situation challenged has an illegal object; for example, discrimination in any form in selection procedures, either of students or of staff, would not be covered unless accidental. Any program that uses criteria other than such objective evaluative data as grades or I.Q. is discriminatory; a program that establishes different criteria

for blacks and whites, and implicitly allocates a given number of positions to blacks, would be illegal, and an errors-and-omissions coverage or, for that matter, a liability coverage would not cover a claim for damages unless the act of discrimination was unintentional. A trustee who was unaware of the selection procedure in use could be defended on those grounds, but an academic vice president or president could not, and the insurer likely would not undertake his defense.

Program discrimination, on the other hand, is a policy-level challenge. The interest of a trustee or group of trustees in expanding the areas of interest of a university in what appears to be a duplicating area might be subject to challenge on grounds of misuse of public or private funds. In such case, the courts likely would view the object as legal and function as appropriate and a case would lie; an appropriate defense also could be mounted. Clearly, this is an area in which protection of policy officials, both paid and unpaid, is desirable.

The fringe benefits area is also important. A regular examination of policy statements with respect to program provisions should be made by counsel, since the failure of the institution to achieve its objectives, conceived or real, provides grounds for a liability action by employees and their dependents. The officer responsible for fringe benefits should thus be provided with errors-and-omissions as well as with an employee fidelity coverage. An analysis should be made of each position at top and middle management levels, and appropriate steps taken to document the positions so that appropriate insurance coverages can be developed and made available.

Specialty Coverages

Coverages for automobile accident liability, aircraft liability, broadcasters' legal liability, and nuclear facility operations liability are usually written separately.

Automobile Liabilities. As was noted in the preceding chapter, where the number and uses of vehicles, including automobiles and trucks, is sufficient to meet the definition of "fleet," it will usually be advantageous to write the coverage as a specialty, providing specifically for both first- and third-party risks in a common policy. Because of the magnitude of the exposure, it is desirable to have a comprehensive blanket liability policy with relatively high limits, either layered or overlaid by an umbrella providing for financial responsibility to limits of ten to fifteen times the desired individual vehicle limit.

Not provided in the ordinary fleet policy, except by endorsement, is institutional liability for employee owned and operated vehicles or hired cars. It is in the interest of the college or university to define the coverage available and to adopt policy guidelines for staff use that make clear the relative responsibilities of both parties. Although it would be desirable to provide that all university business requiring use of vehicular transportation be conducted

in university equipment, and thus be covered by the university fleet policy, it is clearly not possible to make such a provision viable in normal institutional operation. It therefore becomes necessary for the institution to establish, as a matter of policy, limitations on use of personal or rented vehicles coordinate with its objectives. For example, an institutional policy might provide that no staff member's vehicle can be taken for university business, field trip, or other use unless personal insurance meeting specific minimal limits, such as $10,000/$20,000/$10,000, is provided and the individual policy number is registered with the institution. The college or university fleet or comprehensive general liability policy may then be endorsed to provide additional coverage beyond that amount for individual vehicles used in institutional business. It should be clear that the mileage charge paid for the use of a personal vehicle includes payment for such insurance coverage and that the failure of a staff or faculty member to meet such specifications makes him personally liable for an amount equal to those limits.[3]

In many instances, student vehicles are used in class or extracurricular field trips. When university sponsorship is involved, it is essential that a statement accepting responsibility for liability and meeting the minimum limits established by the university be obtained from the driver or owner—if they are not the same, from both—before the vehicle is used in university business. Reporting of the additional vehicles for the period of a field trip becomes a routine matter, and the liability coverage of the institution, as endorsed into the fleet policy then will overlie the individual coverages so provided.

Aircraft Liabilities. Since aircraft liability is absolute with respect to third parties on the ground injured by them, the college or university should seek an aircraft liability insurance cover as a specialty program, or as part of a

[3] A sample form used by one institution to assure staff knowledge and agreement concerning vehicular usage follows.

. . . . . *UNIVERSITY*

AGREEMENT GOVERNING THE
USE OF PRIVATE AUTOMOBILES ON BUSINESS

In consideration of the payment to me by the University of an allowance of $.10 per mile (or other reimbursement as set from time to time), I hereby agree to the following

(1) I will drive the automobile on business *only* with permission and knowledge of my department head.

(2) At all times when I drive my automobile on business I will maintain a valid automobile liability insurance policy on it with limits of liability of at least $25,000 per person injured, $50,000 for all injuries in one accident, and $10,000 for property damage.

(3) In the event of an accident while the car is operated on business, I will report

manuscript policy, providing specifically for all liability risks as a result of the operation of institutional aircraft, including a leased aircraft. Passenger or student participants in trip operations ordinarily will not be covered under such policy, but they may be covered by special endorsement.

Specialty insurers have developed covers for groups that permit individual liability limits considerably in excess of those established by convention and available through any single underwriter. Institutional policy may also be drawn to preclude undue exposure, for example, several institutions have found it desirable to require that teams be divided into three or more groups, each being flown on a separate aircraft. Others have provided that not more than two members of the administrative staff nor more than two members of any departmental staff may fly on the same university trip in a single aircraft. Such policies tend to reduce the exposure and hence the cost of liability insurance.

If group flights are undertaken, special charter coverage should be obtained, at least for the residual liability of the college or university. Workmen's compensation, of course, covers the staff member flying as a part of his program. In addition, direct accident covers may be provided for groups; in the opinion of some attorneys who specialize in defense, such insurance may be deemed as adequate consideration for obtaining waivers of additional responsibility and hence liability actions by participants in such circumstances.

Many administrative officials have taken the position that the college or university should provide death benefits of some amount in addition to workmen's compensation for employees, without regard to waiver of responsibility, when it elects to use aircraft in the conduct of university business. Although the employee is covered by workmen's compensation, the

all details of the accident to the University Department of Insurance and Risk Management.

(4) The financial loss for damage to my car shall not be reimbursable by the University in the event of accident related to business use.

(5) My automobile liability insurance policy need not be classified for commercial use, but if the extent of University business grows to the level where this is an issue it shall be my responsibility to handle this with my own insurance company.

Signed. _____
(employee)

Date _____

Name of
Insurance Co. _____

Policy # _____

Approved: _____
(Dept. Head or authorized person)

excess is deemed to be payment for the extra hazard and to offset the relatively low compensation benefits payable. In the case of non-employees, however, unless the insurance benefit provided is referred to in the waiver, it may not be used as a defense and probably will not reduce the likelihood of actions against the college or university if liability can be attributed to the institution, even remotely.

Broadcaster's Legal Liability. Broadcaster's legal liability is a specialty coverage the institution should consider if it has either a student or an institutionally operated experimental radio, TV, or microwave station. Coverage includes AM, FM, microwave, and UHF/VHF television, as well as telecommunications. The policy covers legal liability as established by FCC and other regulatory and legislative provisions, and may be endorsed to include physical injury to the public on premises, although this is more usually covered under the comprehensive general liability insurance of the institution.

Nuclear Facility Liability. Nuclear facility liability will be necessary if the institution has a reactor or other nuclear facility in operation, or manufactures radioisotopes for its own use or for sale. However, if the institution merely operates experimental programs utilizing radioisotopes or other radioactive materials, the responsibility for and, hence, liability for the product rests with the supplier; hence, the residual of the coverage required by the institution is relatively minor and may be non-existent. The nuclear facility liability coverages may be provided by either of two carriers operating under government supervision and may be incorporated into the policy of the institution by endorsement, or purchased separately. Although additional or excess insurance may be provided through commercial channels, unless product liability or medical applications are contemplated, it is likely to be unnecessary.[4]

Some Observations on Liability

The foregoing material has emphasized the growing risks of institutions in the area of liability. Techniques of managing the risks to reduce or minimize liability in some of the principal areas of challenge have been presented. The availability of insurance coverages applicable in a variety of areas of risk has been noted. However, because of the significance of the legal environment in each geographic area, with respect to responsibility and liability, insurance details have been minimal.

It should be clear that many institutions may claim immunity from such actions and be successful in that plea. It is also true that responsible management minimizes the chances of a liability finding, if challenged. Nonetheless, the growing recognition of responsible management as a basis

[4] See page 75.

for financial responsibility argues for recognition of the area and provision of an overt program, including insurance for dealing with it.

For the large institution that offers both general and professional education, including not only instruction but also research and practice, a broad form, comprehensive institutional liability policy written blanket on an "all-risk" basis offers protection against significant financial loss. Policy limits should be set with counsel in terms of local experience but at sufficiently high levels to cover the potential, including catastrophe. Although automobile, aircraft, broadcast, nuclear facility, and other special program liabilities might be excluded, if otherwise covered, this type of contract, by its nature, covers all risks except those specifically excluded and/or underwritten in other coverages. The costs for such coverage will be a function of expected experience. Thus, where immunity may be used as a defense and experience has been good, the rates and total premium charged will reflect that. By the same token, rising numbers of challenges and poor experience with those filed will tend to increase charges.

For the smaller institution, a comprehensive general liability policy with reasonable financial limits or endorsement for automatic reinstatement, which is endorsed to cover specific areas beyond those provided by the general policy, is probably adequate. Here, as above, the decision as to whether or not to provide the coverage and the size of the policy limits should be based on the local environment and expected experience. Where claims have been minimal or non-existent or where immunity may be used as a defense, a minimal limit coverage is probably enough. But that decision should be made with legal and insurance counsel. The responsible officer must understand the contractual limitations and the institution's liability for items that are specifically excluded, such as automobiles and items in the care, custody and control of the institution.

OTHER CASUALTY COVERAGES AND BONDS

Another major area for consideration by the risk manager for insurance coverages involves criminal activities. The problems in this area are of several types. First are the direct loss covers designed to replace items stolen by a third party through armed robbery or burglary or by an employee through fraudulent conversion.

Coverage may be purchased for robbery or burglary, which requires, for settlement, evidence of armed holdup or forcible entry. Coverage for this risk can be provided either by an inland marine floater or by endorsement to the property form covering institutional properties and monies, regardless of location, in the hands of a university employee or agent. Although either will provide for losses on- or off-premises, it should be remembered that the coverage applies only to institutional property in the hands of employees; it does not cover personalty of the employee or visitors at the institution unless specifically so endorsed.

Perhaps the one exception to the exclusion of personalty on university premises is that covering bailment, where the university accepts care, custody, and control of personalty, as for example in a checkroom. At university functions, as at the university commons, checking apparatus may be set up to permit safe storage of personalty for specified periods. During the time the property is in its care, the university has responsibility for it and losses due to any causes may need to be covered. This may be provided by a separate bailment coverage but is more often endorsed into the property or liability coverage, or both.

A second and increasingly common bailment problem has grown up on campuses that provide parking for student and staff automobiles. If the lot provided is simply an open space for public parking without supervision, institutional liability, at worst, is only residual or contingent. To protect against it some form of liability coverage may be necessary. In cases of controlled parking, although the university may specify no assumption of responsibility in the parking agreement, there is implicitly a responsibility for safekeeping, and either forcible entry and theft of personalty or disappearance of the vehicle may give rise to some institutional responsibility. In addition, where self-parking is the rule, there is also responsibility for bodily injury incurred as a result of accident or incident in the lot, whether vehicles collide or strike a pedestrian. While the individual vehicles are presumably insured, the institution would be well advised to provide a garagemen's and warehousemen's liability policy or endorsement to the general liability coverage to provide for its residual responsibilities in these areas. Incidentally, unless specifically excluded, personal injury on university facilities is covered implicitly in the comprehensive general liability policy, and separate coverage for this risk need not be provided. Counsel for the university should evaluate the policy and local decisions with respect to incidents in private lots before a determination as to the form and amount of coverage is made.

Mysterious Disappearance

A major problem, especially for urban institutions at the present time, is mysterious disappearance of many types of equipment, as well as money, securities, and manuscripts. Wherever there has been evidence of forcible entry and removal of one or more objects of value, the appropriate coverage is in the casualty line covering burglary. In the great majority of instances, however, there is no evidence that forcible entry or armed attack led to removal of the items; the problem thus is one of "mysterious disappearance."

Traditionally, this problem was covered by an endorsement providing for "robbery, burglary, theft, and mysterious disappearance." As the frequency of incidents and the values involved increased, posing a major problem for the college or university, carriers began to question the assumption of this risk. Investigations in many cases indicated that the disappearances occurred during hours when the facilities were closed and

locked to the public, but while such university personnel as cleaners, skilled artisans, and administrative and faculty personnel had means of entry and egress not subject to control. In some instances, as was pointed out earlier, it was discovered that providing appropriate surveillance during maintenance, with real control of facilities at all times, preventing entry except with written authority, practically eliminated the problem. In this light a number of institutions and carriers determined that the risk was really employee dishonesty rather than robbery or burglary. Accordingly, a broad form employee fidelity coverage was developed to treat this type of circumstance.

It is notable that the employee fidelity form was not originally designed to cover mysterious disappearance of hardware, such as business equipment, laboratory equipment, or supplies, but was for protection against embezzlement, fraud, or disappearance of money or securities and losses discovered in normal audit or supervisory procedures. Such coverage, too, is desirable and may be endorsed into the broad form liability policy or may be purchased separately in a form that will cover all types of employee dishonesty.

This coverage does not replace the surety bond, which may be, and frequently is, used to cover specified positions, such as those of the controller, bursar, and others normally responsible for significant amounts of university property, both because they have access to it and because they make judgments governing its application and use. The hazard so covered is different in nature from employee dishonesty, by which a cashier or other person regularly handling money or other institutional property, under direct supervision, becomes involved in theft or fraudulent conversion. Situations involving payroll falsification, falsification of bookstore receipts, or disappearance of cash in the cafeteria are dealt with by the employee fidelity or "dishonesty" coverage.

Additional covers in the broad form, or by endorsement, may include depositor forgery, counterfeit money, and the like, all of which are also contemplated in the broad form employee fidelity policy.

There is no substitute for a strong supervisory system wherever university property is handled in normal course. Internal checking procedures which provide for interdependence of reports and audit points are essential to assure that such problems are minimized. Similarly, a strong internal audit group having responsibility for review of records and cross-checking of physical reports and cash balances is vital. At every point where petty cash, collections of any type, or payroll or other cash authorization procedures are in force, an irregular but routine check must be made to assure reasonable control. Such control procedures will be questioned and examined by the insurer; if he makes counter-suggestions, the institution will do well to observe them.

Bonds. In the discussion of property risks, reference was made to the need for bonds. Basically, a bond is to assure that the employer will suffer no loss as a consequence of dishonest performance by an employee or failure to

perform in accordance with a contract, by providing the financial means to offset such loss.

Bonds are of two broad types. One, the surety bond, is used to guarantee the integrity of the bonded. A controller, cashier, or other officer involved in handling institutional proceeds is normally so bonded. In effect, the surety bond provides that if the bonded fails to perform in accordance with specified legal conditions, producing a loss to the employer, the loss will be made good. It is a coverage against dishonesty or irregularities that may or may not involve criminal complications. The bonding company simply agrees to make whole the holder of the bond for any fraudulent, dishonest, or other irregular act of the bonded employee. In most instances, the bonding company reserves a subrogation right, *i.e.*, reserves the right to proceed against the dishonest official both to regain the assets lost and to assure his punishment.

The conflict between the coverages provided by surety bonds and the employee fidelity coverage should be noted; each insurer should be aware of the existence of other coverages, and a prior agreement as to areas of action established.

The second broad category of bonds guarantees specific contract performance. Contractors, construction firms, and franchise groups are bonded to guarantee performance of their contracts for a period of time and for an amount up to that of the bond. Failure of a contractor to complete construction in accordance with the term of his contract, in effect, brings the bonding company into the case to finish the job. Normal procedure would be to levy a penalty on the contractor in accordance with the terms of the agreement and to require that the bonding company undertake to complete construction as rapidly as is possible, while at the same time providing for any extra expenses incurred by the institution in making alternate provision for the additional space required. A franchise holder, in the same way, may default on a contract for financial or other reasons; a bonding company would be required in this instance to assist in obtaining a replacement and to contribute to the cost differential between the actual amount expended in covering the situation and the amount of the original contract.

The institution itself may be required to post bond to assure performance of given plans. In undertaking to redevelop a campus area, for example, the institution may be bonded to perform the reconstruction in accordance with city approved plans, the amount of the bond in this case being the estimated cost of performance. The bond will normally apply for the period of time during which the institution agrees to perform.

Provision of bond is based on an analysis of the individual to be bonded, and in many instances the bonding company may require posting of security or surety with it. Where such is the case, the institution should look to the history of the proposed contractor or employee to discover his

limitations. If he cannot establish a reputation that warrants coverage by a normal premium, his ability to perform should certainly be questioned.

WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE[5]

Since 1911, each of the states has enacted a workmen's compensation or employers' liability law, or both. Although the laws vary materially from jurisdiction to jurisdiction, they have in common the concept that the employee should be relieved of the burden of establishing the employer's negligence for injury arising from his employment. In effect, each party surrendered certain traditional common law advantages in exchange for a statutory "no-fault" system of compensation to cover at a minimum the medical expenses of a cure, continuance of some portion of the employee's earnings during the period of total disability, and compensation for resulting permanent partial or total disability. Benefits for dependents in the event of death are provided in varying forms, along with some provision for occupational diseases, and in many jurisdictions disability from continued injurious exposures.

The institution must be aware that the cost of loss in the workmen's compensation area is not limited to workmen's compensation benefits, but includes what many authorities have estimated to be four times that figure in lost productivity, diminished morale, temporary inefficiency of related workers, and a multitude of other factors. Although the true cost of loss to the institution is large, it is also subject to management control. For any institution whose insurance rates are based on experience, or for a self-insured institution, the net cost will depend directly on the effectiveness of loss prevention activities and the management of the claims after an accident occurs.

Almost all insurance policies for workmen's compensation are combined with employer's liability protection, which may be more important than the former in those states that permit an employer or employee to choose whether to proceed in terms of the workmen's compensation act as opposed to the tort liability recourse following an injury. This must be examined in terms of one's own compensation law and is not an especially large factor in risk management. It is generally advantageous for the institution itself to accept the terms of the compensation law and to encourage or even to require new employees to do so where the election is possible.

If contracts with faculty and staff provide for continuation of full salary during periods of disability, the institution's insurance company should be fully aware of any such agreements, to prevent duplication between

[5] This section was substantially written by Stanley R. Tarr, Risk Manager, Rutgers University.

statutory benefits for temporary disability and any salary continuance program.

Each state sets a different threshold of compensation premium beyond which varying degrees of experience rating are available or mandatory. In an insured program, the basic method of determining premium is the premium rate times salary. There are usually different premium rates for varying degrees of hazardous occupations; the rates are generally identical for all employers in the same "industry." Customarily, colleges and universities are lumped together with public schools and similar institutions. When the premium is sufficient, an institution may be rated on experience, which means simply that the manual premium may be modified by a positive or negative factor determined by the performance of the institution in comparison with that of similar employers that have the same class of employees. Although it is generally assumed that colleges and universities in a controlled atmosphere can produce better results than some other employers, this is not necessarily true; but a favorable experience modification may be achieved through positive loss prevention measures that reduce injuries and promote safety. In states where compensation levels and premium costs are high, the return for safety is equally high.

For very large employers, most states offer a retrospective insurance rating plan for workmen's compensation. Briefly, such a plan provides that a minimum insurance cost be borne by the employers, between 15 and 25 percent of the experience rated or "standard premium," plus the actual claims payments of the insurer, modified by a percentage to cover his variable costs of claims service and tax. Under a retrospective plan, one is essentially paying his own way.

The final alternative for paying the costs of employee injuries is self-insurance, which is available to institutions in most states. Prequalification with the state authorities is necessary, and bonds are sometimes required to insure solvency. Except for the very largest institutions, it is generally desirable to examine the cost of purchasing claims service from one of numerous specialty organizations. An alternative is to provide the staff to handle claims internally; in this case a number of services customarily provided by the insurer must be replaced, important among them being safety and loss prevention consultants. By far the most attractive aspect of self-insurance is the ability to invest the funds held as reserves against as yet unpaid claims, which for a large institution can provide a sizeable return.

Certain states offer the option of insuring through a state fund; a few states make it mandatory. Where such is the case, of course, the legislation sets the terms of performance.

Financial stability and predictability are important factors in employee injury management. Under a manually computed premium or an experience rated plan, one knows his ultimate cost in advance. Under a retrospective plan, it is long after the end of the policy period before the net cost is

determined. Although all retrospective plans have an upper limit of liability for the employer, the insurance charge for which is contained in the basic premium, and although minimums and maximums are known in advance, the net cost will fluctuate between these points.

Where the number of employees exceeds 1,000 and the mix of exposures is such as to produce relatively few severe incidents, it may well be desirable for the institution to devise a plan of self-insurance, contributing at the manual rate to a cash reserve account established for that purpose. In order to do this, it will be necessary to establish a claims adjustments section and to develop personnel capable of administering the program. The institution should then charge all benefits paid, together with administrative costs, to that contribution reserve. Since the benefits paid for long-term disability, rehabilitation, and death are severe in many states, the statutes should be examined before the institution decides to self-insure entirely. In those states where lifetime benefits are available to employees or their dependents, self-insurers find it prudent to purchase excess liability insurance to limit the maximum exposure from any single accident or an annual aggregate, or both. The premium for this insurance is geared to estimated exposures. In effect, the institution is buying only total loss insurance or catastrophe coverage and is providing directly the basic coverage for temporary disablement and medical expense. A careful analysis of frequency and severity should precede any decision in this direction, and case and total aggregate benefit limits should probably be established with the excess line carrier.[6]

The point is that the compensation risk has tended to be relatively stable in education, and that where appropriate personnel engineering and safety programs are in effect the frequency rates tend to be reasonable and the severity relatively low. In view of this combination, it is desirable to demand premium adjustments based on experience, or to accept some of the risk institutionally and permit variation in annual cost to occur within relatively narrow limits. In any case, the provision of the excess-of-loss layer

[6]In a recent instance, actual claims costs for the preceding ten years averaged about $9,000 per year, the variation was from $4 000 to $24,000. The annual average premium established for the risk amounted to $124,000. A self-insurance program with a $5,000 per-case and $50,000 annual aggregate stop-loss excess line reduced the premium to $18,000. By this arrangement, the insured was able to reduce his annual costs to an average of $27,000, with a range of costs of from $22,000 to $42,000. Since the average retrospective return for that same period amounted to a little less than 30 percent of the premium, or about $36,000 per year on the average, the change to a self-insurance account resulted in a saving of approximately $32,000 per year. The insured, of course, had to provide claims adjustment services, administer the program, including safety engineering and training services, the total costs of which are unknown At the same time, the costs of his liability coverages were increased, possibly in part because of the cancellation of the compensation coverage. Since the costs for the liability coverage had exceeded the premium for two years, however, it is difficult to say whether the increased charge was the result solely of the compensation action or of a combination of factors.

serves as an ultimate protection for the institution, providing at a relatively low cost against major catastrophes that might occur.

Foreign and Marine Operations. It will normally be to the advantage of the institution, if it engages in foreign operations, to elect compensation coverage at the company home office state level anywhere in the world, subject, however, to the law of the state or country of the workman's domicile, if the employer maintains a cost center or administrative office there. This assures continuing coverage for American nationals, ranging from secretarial-clerical to professional workers, on terms at least as good as if they were within the United States. One may also elect to provide coverage through the home office and, by endorsement, the appropriate coverage in each of the states or countries in which the institution operates. The increasing frequency with which research field trips and transfers of personnel to locations other than the home base for work take place makes it desirable to provide, by endorsement, for this method of administration and costing.

For institutions that offer marine biology or ocean programs, or other programs involving vessels, it is desirable to endorse the coverage to provide for longshore and harbor workers, merchant seamen, and others within the same general policy.

Observations on Workmen's Compensation Management

In many states an employer may elect not to utilize the insurance provisions of the workmen's compensation program. Where the experience has been sufficiently good, it would appear that consideration should be given to a self-insurance program with some aggregate or stop-loss coverage as an override, especially when medical facilities are available as a part of the institutional program and the institution engages in health and safety engineering.[7] However, it is clear that, from an institutional point of view, there is considerable advantage in accepting the known limits of a statutory schedule in lieu of providing individual case defense.

Rehabilitation programs, second-injury funds, and physical examinations of all employees before hire, together with some investigation of prior employment history and complaints, should become part of the conscious personnel policy of the institution, with a view to building an appropriate experience base before undertaking any form of direct or self-coverage.

In summary, compensation costs tend to be stable depending on the laws of the state. There is an increasing tendency throughout the nation toward higher benefit levels, with a growing consideration of federally established minimum levels of benefit. These factors are likely to increase the cost of compensation insurance in states that have provided relatively low

[7] The college or university's employee medical coverage, if employer financed, may be used to cover work-related hospital and medical costs, for example.

benefits in the past. The risk manager must pay careful attention to the financial position of the institution in respect of injuries to employees. The possible means of insuring or self-insuring the exposure should be weighed to make certain that the institution is taking the most economical approach. Before such decisions can be made final, all the data concerning previous losses and premium levels must be assembled and carefully analyzed. Involvement of insurance professionals in this analysis is advisable, since the financial costs of employee injuries are frequently much higher than is recognized at first glance.

VIII

Insured Fringe Benefits

In addition to property and liability risks, institutions of higher education must make provision against personal risks that affect their staffs. For administrative purposes, these provisions are included in the fringe benefit programs. Most common among them are pension and group insurance plans providing life insurance, long-term disability income insurance, health insurance, and travel accident insurance, all of which are to some extent tailored to the needs and practices of higher education.

Changes in the socioeconomic environment since the early years of the Twentieth Century, and particularly since World War II, have generally increased the significance of fringe benefits as an element of employee compensation. Higher education has been no exception to this trend. According to the best available data,[1] fewer than ten institutions provided pensions or other fringe benefits for their professional staffs before 1906. By 1940, some 350 institutions had formal retirement plans, and a number of others had made some informal provision for them. Group life insurance was offered by some institutions, and a few were experimenting with health or medical expense coverages. Since then, the option to elect Social Security has been extended to all institutions and private individual or group programs have multiplied rapidly. Nearly all colleges now have full social insurance coverage and more than 95 percent of all chartered institutions participate in formal pension and retirement plans beyond Social Security; nearly all offer life and health insurance programs, and many offer other coverages as well. While fringe benefits cost higher education less than 1 percent of salaries and wages in 1934, such expenditures now range from 7 to 25 percent. Contributions by staff members to these programs vary from 6 to as much as

[1] See William C. Greenough and Francis P. King, *Benefit Plans in American Colleges* (New York: Columbia University Press, 1969.)

14 percent Altogether, fringe benefits costs gross from 13 to 30 percent of salaries and wages, with the institution's share averaging about two thirds of the total.

Originally, the program of fringe benefits was largely planned and provided by institutions at their own option. More recently, however, the fringe benefits area has evolved substantially through employer-employee negotiations. Administered by the personnel function, benefits offered by higher education have generally followed the direction established by industry, though since the early 1950's some innovations have been initiated in and by higher education. Because of the large proportion of the staff budget fringe benefits consume, it appears desirable that the primary responsibility for financial planning and contract negotiation be assumed by the financial officer of the university. Moreover, since many of the fringe benefit programs involve risk management as well as insurance techniques, the programs probably should be the responsibility of the financial officer charged with the responsibility for that function. Combining the areas, in many cases, will make it possible for the institution to acquire economically the expertise needed to handle the total area effectively. This is not to say that the financial officer should undertake bargaining with employees, although he may well be involved in these negotiations; he must be involved, however, in structuring the programs and contracts, managing reserves, and directing the administration of claims, one of the largest elements of cost, other than benefits, in the program.

PENSION AND RETIREMENT PROGRAMS

In higher education, pension plans for personnel, particularly professionals, have developed along several principal lines. In 1971, more than 95 percent of all chartered institutions had retirement programs. By far the majority, about 65 percent, are with Teachers Insurance and Annuity Association of America and College Retirement Equities Fund (TIAA-CREF); the remainder are underwritten by state teachers' retirement systems or by commercial insurance companies, or are self-insured.

The legislated programs are standard programs available to all employees of many state institutions. The typical plan is financed by the legislature, with some contribution required of the participant, and is designed to emphasize longevity of service, benefits usually vesting in the employee after one or two or up to ten or more years. In most cases, the plans have a formula benefit, usually a percentage of monthly income (either average for lifetime or for some specific group of years, *e.g.*, the high five years) at some age or on completion of some period of service, or both. Some plans are fully funded while others are not, depending on the legislature's annual action to provide funds for maintaining benefits. Most provide for a variety of settlement options, including survivorship; some also provide for

disability retirement income when a disability is the basis for early retirement.

By far the most widespread are the TIAA-CREF pension programs. These are typically money purchase plans[2] by which pre-agreed amounts are deposited and accumulated on behalf of employees, individually, until retirement, at which time the available reserve (including interest and dividend accumulations) is converted to an annuity in whatever form is suitable to or desired by the annuitant The TIAA-CREF programs are distinguished by the fact that they are written under individual contracts with the employee, there being no contractual relationship between the university and TIAA-CREF. All contributions thus are transferred in the name of the employee, are credited to his account, and are fully vested in him from the beginning; thus, they are fully portable provided that the individual is willing to leave his own contributions in the program.[3]

Since 1952, these plans have included a variable income alternative through an election to participate in CREF, the first organized variable income program based on equities. CREF programs, of course, cannot guarantee any specific income; the annuity value fluctuates from year to year with the market prices of the securities held. A considerable number of settlement options are available, and the companies supply detailed information on the broad alternatives at the time of retirement. In the case of the employee's death, the reserve values are available to survivors and may be taken in cash or one of the optional settlement modes.

A number of private pension programs have also been set up by individual institutions, usually with commercial insurance carriers, although some are trusteed. A few programs are funded currently, *i.e.*, the pensions are paid as a part of payroll from current income. Most are group annuity programs, by which contributions (employer and employee) are made in each year of service to purchase a life annuity for each covered person to begin at age sixty-five (or some other age), the amount of the deposit (cost) being determined by the present cost of the annuities due for each. The reserve is vested in the group, rather than a single individual, although the present value of any annuity can be calculated at any point. The annuity benefit is determined by formula, and contributions adequate to produce that benefit are made. On retirement, the annuity is payable and, depending on the plan, may be taken in whatever settlement form the individual annuitant designates. Obviously, survivor benefits are not available until after retirement, and then only if an appropriate election has been made. The provisions of these plans with respect to vesting and portability, as well as

[2] Group annuities also may be written by TIAA, nearly all coverage is provided in the manner described, however.

[3] An individual may elect to withdraw his contributions on leaving a covered institution provided that he has had less than five years in the program. If he does so, however, the institution may elect to recapture its contributions on his account.

benefits and settlement options, are legion. Typically, all but the non-funded plans provide for vesting after a certain period. The size of expected benefits has been a function of ability to pay and employer-employee negotiation. Typically, the benefits have been developed as a percentage of average annual covered compensation. As a result of rapid inflation during the postwar years, most programs have taken steps to adjust benefit levels to some relatively current standard (*e.g.*, average salary of the high five years) to minimize the effects of inflation, sometimes without adequate funding of the past service obligation.

FUNDING PROBLEMS

The present emphasis on pension development, and especially on funding, is indicated by the number of pension standards bills being considered by Congress. Nearly all the bills provide for early or immediate vesting and full funding and portability, and require achievement of these objectives in a relatively short time, perhaps three years. Since full vesting requires deposit of actuarially calculated sums, it is desirable that colleges and universities whose plans do not meet these standards plan to make appropriate financial provisions for this purpose.

Another major problem is the rapid pace of inflation, which has significantly worsened the positions of persons with fixed incomes. Even more detrimental to the individual is the use of lifetime average income or cumulations of actual dollars, without subsequent adjustment for change in value, as the basis for the pension benefit amount. When inflation proceeds at a rate of from 3 to 5 percent annually, a pension based on lifetime average salary will be determined as a function of an amount well below the current salary level. Even a relatively generous program, such as one that provided 2 percent of average salary times the number of years service, if based on average salary, would produce a 1 percent return in terms of present dollars at the time of retirement. As a result, such pensions prove to be inadequate, and personal decisions made over most of the lifetime of the covered individuals will prove inappropriate. The deterioration of post-retirement income will lead employees to bring pressure on their employers to provide cost-of-living or other adjustments, which are necessarily employer funded. In the present situation, it has been estimated that contributions of 16 to 18 percent of salary over a working lifetime of thirty-five years will produce about 2 percent of the average income from the final five years of service, multiplied by years of service. Even so, if an average retirement of ten years is assumed, post-retirement income will deteriorate with inflation by approximately 30 percent, unless continuously adjusted.

INTEGRATING PENSION AND SOCIAL SECURITY

There has been considerable discussion of the merits of integrating pension and Social Security programs. Although there were advantages to

building a pension based on total income, without reference to Social Security, on the assumption that Social Security would provide a flexible floor of protection for all, an inequity will result from the fact that for persons in lower income brackets a considerable proportion of salary has been provided as pension by Social Security, while at the other income extreme a relatively minor percentage has been provided. To produce relative equity, or a degree of uniformity throughout the plan, some measure of integration is essential. Such an approach would reduce total costs by the extent to which the Social Security benefit, at least primary benefit, becomes a part of the pension base, with supplementation from other programs above that base to whatever pension income objective is selected.

Contributions to the Social Security program currently (beginning January 1, 1973) are made at the rate of 5.5 percent each by the employer and employee on all covered income up to $10,800 per annum. Benefits are established by law, the current benefit table dating from 1972. Since benefits are a function of average income earned over a considerable period of years, plus number of dependents, it is not possible to indicate an average return. The Social Security Act had as its objective the provision of a basic floor of protection for all participants and benefits were, and are, skewed to favor those with lower average incomes. Present legislation suggests that the benefits concept is being modified in practice to provide an average return on a significant part of income rather than the "minimum floor" originally contemplated.

The trend in Social Security program development poses additional problems, as well. As Social Security is extended to cover an increasing segment of income and the benefits are increased, there are serious implications for both the university and the employee. Contribution arrangements to vested private plans, for example, assume a relationship between some average salary and total pension benefit. As the Social Security benefits and taxes rise, unless the private plan is modified accordingly, that relationship will change and the end product, the pension, will be greater, perhaps much greater, than contemplated. To adjust contributions and benefits currently requires a new agreement including provision for disposition of already vested benefits and a redistribution of future contributions between Social Security and the private pension plan. Consideration of prior vested benefit rights and development of a method of prospective adjustment which preserves those rights in the light of the Social Security windfall, without depriving the university of its share of that windfall, also is required. The methods of adjustment are different in deferred annuity and money purchase pension plans and the legal position of the institution must be determined in the light of the basic plan, the collectively-bargained agreement, if there is one, and the current situation with respect to Social Security. Basically, the need is to build a flexible program for providing pensions in total, which recognizes the equities and provides for automatic

prospective adjustments as future legislative changes are made.

UNEMPLOYMENT INSURANCE PROGRAM

Another social insurance program, although not strictly a fringe benefit, as the term is commonly used, provides a level of income and employment security to all employees. Since it is funded by the employer, it is managed as a personnel service program; as workmen's compensation, the program is operated under state law, although required by federal statute. Basically, this program provides income benefits to the qualified and eligible personnel involuntarily unemployed for a number of weeks.

The 1970 amendments to the Federal Unemployment Tax Act (P.L. 91-373) made coverage under the unemployment insurance program mandatory for institutions of higher education, hospitals, and a number of other nonprofit employers; state laws governing the coverage generally had to be amended to extend the existing or amended state program to such institutions employing four or more people, and appropriate legislation passed so that all covered employers in each state would continue to receive federal tax credit for participation in the state program. Thus, each of the states moved to adopt legislation providing for coverage of the subject institutions and their employees, establishing eligibility and qualification requirements meeting the federal criteria for this special group of employees, and providing for the financing of the program.

By its very nature, the unemployment insurance program, although it has been implemented throughout the nation, differs considerably from state to state with respect to coverage requirements, eligibility and qualification, benefits amounts, and technique of financing. Thus it is difficult to describe specifically any common provisions of performance or cost. A brief summary of the federal requirements, together with some observations on program developments in the states, must suffice.

Coverage

In essence, the law requires that coverage be extended to those who earned all or part of their wages as employees of institutions of higher education, with specific exceptions. It permits exclusion of services performed by a student who is "enrolled and regularly attending classes," including nurses and interns in teaching hospitals. The language of the exclusion is similar to that of the Social Security Act, and it may be applied similarly, although individual state laws and practices differ on the point, some, for example, specifically include student services and wages. Institutions in states where the exclusion is made must introduce appropriate statements defining "student" in their catalogs and the institutional program requirements. While the question of undergraduate student status is relatively simple to resolve, in the graduate area the object should be to exclude from

coverage all who are participating in an educational aid program, such as graduate assistants and research assistants. These should be defined as students, whether or not they are attending classes, so long as they work under the direction of a department, doing research or other work required in normal course for completion of degree requirements. If such "student-employees" claim benefits during vacations or after graduation, the college or university should deny liability for the claim and seek a referee finding that permits exclusion of such service from coverage under the "student" definition. Once that precedent is established, the position of the institution with respect to charges or taxes and program will be clarified.

The federal definition of employment also permits exclusion of services performed for a school, college, or university by a spouse of a student if paid under a program designed to give financial assistance to the student. If the exclusion is to be applicable, however, the spouse must be informed of it at the time of his or her employment.

With these exceptions, the insurance covers all employees of higher education just as it does the employees of any industry in the state.

Qualification and Eligibility

The federal law requires that all state conditions of eligibility and qualification for payment of benefits apply to claimants who earned all or part of their base period wages in employment with an institution of higher education, except that payments of benefits are prohibited during specific periods of time to those employed in instructional, research, or principal administrative capacities. In essence, employees, other than those included in the exception, will be covered during periods of temporary layoff, as during the annual two-month summer shutdown, even when the shutdown is made a condition of employment. The exception to this requirement is based on the theory that the instructional, research, and principal administrative personnel have annual contracts and perform service on a yearly basis, although there may be periods of formal inactivity; therefore, they are denied benefits as long as they are under contract. In other words, an instructional employee hired on a year-to-year basis cannot claim benefits during the summer shutdown, if he has been accorded a contract for the next year by the present or any other institution. Thus, to preclude benefit charges it is clearly to the advantage of the institution to regularize its appointments and to obtain full information on the activities of its professional staff when they are terminated.

Financing

The federal law with respect to financing requires that each state law give the nonprofit organization an option either to reimburse the state for unemployment benefits attributable to the organization or to pay contributions under the state's normal tax provisions, including any modifications

that may have been adopted for all employers. The law also permits certain additional options provided the state has adopted them with respect to all newly covered employers. Many states did not include these latter options. The basic requirement is that the state accord each institution the options either to participate directly in the regular unemployment tax program of the state or to reimburse the state agency for all charges incurred for claimants on its account.

Programs have now been adopted in all states; information on program, coverage, qualification and eligibility requirements, and costs, as well as alternatives, should be sought from the state Bureau of Employment Security. The appropriate financial and personnel officers should review the provisions of the state legislation to determine the most suitable operating policies. Data accumulated from entering and terminating employees must be used to identify problems and as a basis for personnel actions. Constant review of programs and legislation, as well as actual experience under the law, is essential.

This social program, while beneficial to employee welfare, adds significantly to institutional costs and must thus be managed appropriately in the light of all the operating facts.

General Observations

Estimates for several institutions, and actual experience in two jurisdictions where the program has been applicable for more than two years, indicate that actual costs of the unemployment benefit program have varied from 0.6 to 1.3 percent of covered payroll of institutions of higher education. Except in rare cases in which the institutional calendar regularly gives rise to near total shutdown of campus schools, it appears unlikely that cost rates will exceed 1.5 percent, if the permitted federal options and exclusions (students, especially) are used; where there are deviations in the state law, however, costs may vary considerably. In two states where students are covered, for example, estimates based on present experience suggest that expected costs will be more than doubled. Each institution should thus evaluate its state law and its personnel practices, and review its policies and definitions, with a view to minimizing its costs under the legislated program.

It is vital that each institution seek to regularize and stabilize its employment, minimizing both summer layoffs and personnel turnover by centralizing the personnel functions so as to assure continuous utilization of persons by skill in different contexts, and to discourage layoffs and simultaneous hiring for unskilled and many skilled functions. To be effective, all hiring should be centralized, and all departments, including those using grants and contracts, should be made fully responsible for charges resulting from this program. All should be required to hire staff through the personnel function, meeting appropriate criteria for hiring, discharges, and layoffs. Similarly, it is incumbent on the personnel officer to build a reporting system

that will make records and information available in sufficient time and detail to permit appropriate challenges of claims presented on grounds of qualification or eligibility. It is also necessary to develop a record with the Bureau of Employment Security and the appeals officers that will give high credibility to university actions. The object is to provide the administration expertise required to manage the program effectively.

Because the laws work with standard criteria, and permit little judgmental direction, university practices and program decisions should be designed to work with these criteria, not independently of them. if operating practices are to achieve these ends. In many cases this will require review and development of new policies which will make for sound personnel actions designed to minimize variation in costs of program.

LONG-TERM DISABILITY INCOME INSURANCE

Relative income security for employees is one of the basic objectives of any fringe benefit program. To achieve this end, in addition to pensions and life and health insurance coverages, some provision is desirable for income lost because of accident or illness, particularly for non-work-connected disabilities covering long periods of time. Although only a small number of the employed group are likely to be affected by this hazard, those experiencing a significant physical or mental impairment, and their dependents, can be seriously hurt.

Insurance coverages designed for this risk are of relatively recent origin. Public attention was first focused on this area in the early 1950's, when disability income amendments to the Federal Social Security Act were introduced. When the principle was adopted by amendment, provision was made for income benefits for those whose disabilities were permanent, beginning in the seventh month of the disability and continuing until age sixty-five, when the age annuity would become effective. For persons with incomes under the Social Security maximum the benefit was reasonably adequate, but for those whose incomes were two or more times the Social Security maximum the benefits provided little more than a minimum standard of subsistence. Accordingly, personal disability income insurance coverages were developed, and they were soon adapted to group application and became a standard part of most well-balanced fringe benefit programs, providing for replacement of a significant segment of income during periods of personal disability extending over long periods of time.

In 1956, the program was introduced into higher education with the stimulation and aid of a Ford Foundation planning grant to TIAA, which developed a program for those covered by the TIAA pension system and later extended it to others in education. Many of the state teacher retirement systems have made some provision for long-term disability income security, either by adapting the pension program to permit early retirement in the

event of disability or by insuring such income loss separately. The latter approach has become more significant in recent years.

Since 1956, programs have been introduced into a considerable number of institutions of higher education, both public and private, and there has been a steady trend toward more complete and broader coverage for all employees. In 1968, the most recent year for which relatively complete data are available, about 700 institutions provided long-term disability income programs. Of these, 453 were insured, nearly 200 were provided by state or public retirement systems, and the remainder were self-administered or self-funded. Since that date, the number providing this coverage has continued to grow and the scope of new programs has been further broadened.[4]

Plans currently in force vary widely, from simple applications of the early retirement provisions of the pension plan in cases of disablement, with appropriate income reductions for age, date of disability, and length of service, to a broadly based income replacement program, coordinated with Social Security and designed to produce something approaching net income after taxes at time of disability. Many also provide for an additional amount sufficient to offset contributions required to maintain all other fringe benefits up to age sixty-five, or until recovery, whichever first occurs.

In negotiating this coverage, care should be taken to establish the terms of "disability" and to provide flexibility that will permit continuing adjustment by the institution and the individual to changing conditions. It is vital from the social standpoint, as well as for the individual, that the coverage be clearly defined in terms of present income and that the criteria of disability leave no room for major doubt. In general, provision should be made only for total disability, and that, after a waiting period of six months to one year, depending on the sick leave policy of the college or university. The cost of the plan will be significantly reduced as the deductible period is increased. Generally, protection in a particular job during disability should last one to two years, should be based on appropriate medical evidence, and should be subject to third-party findings or arbitration. Thereafter, claim criteria should be broadened to include other occupations suitable to the professional status and training of the individual. Safeguards, such as use of third-party groups involving outside personnel, may be necessary to administer the program effectively and equitably. The objective is to provide disability income when there is disability, not to provide early retirement or means of covering department or institutional errors in hiring. Operation of the program in conjunction with the pension plan appears logical in that the individual and the institution join to protect his income for life; the basis is the institutional program, and such action contemplates continuing attachment to it through the functions of these programs.

[4] Greenough and King, *op. cit*, p. 180 ff.

At present, costs for this type of coverage vary from 0.3 percent to 0.75 percent of covered income, depending on level and length of coverage and the waiting period. Costs may be managed effectively by use of reserves and experience rating on a five-year base, with an aggregate stop-loss coverage or pooling of benefits for any excess over five years for a single case. An employer whose operation is large enough to permit development of credible experience may elect to self-insure the losses for each case for the first five years. Frequency and severity data, with a calculated reserve, help to make this approach manageable. Claims administration, however, poses another type of problem. The institution must be prepared to adjust claims as if it were a commercial company, enforcing policy terms and requiring all the proofs necessary to administer the program effectively. A soft policy on this point can increase costs significantly above those for the commercial coverage, and if there is an excess insurer, he will insist on appropriate claims handling.

Acceptance of responsibility for either a self-insured or third-party insurance program requires maintenance of both personnel and financial records and adequate documentation to assure the best price basis and appropriate administration. For the smaller college, insured coverage is probably the only logical procedure. Pooling of experience provides security for all participants while reducing costs and the size of required reserves for the program.

LIFE INSURANCE

Group life insurance programs are designed essentially to provide a survivorship benefit to assist the family and dependents of the insured in meeting the hazard of untimely loss due to premature death. The programs should be designed with the entire benefit package in view. Basically, the need is to provide maximum coverage at the early ages, before pension or other personal security programs are developed and when the family and credit needs of the employee are at a maximum. Thereafter, protection can be decreased as security increases with age and seniority. Reduction of the face amounts of insurance will lower costs for all and particularly for those at the older ages. Shifting of the savings in such cases to the pension plan will result in even greater security for such employees and their dependents.

Group term insurance is generally limited by law or regulation to some multiple of salary, usually with a maximum. Typical plans provide roughly for a two-to-one ratio, or two dollars of face amount for each dollar of annual salary; in some cases, double indemnity is provided for accidental death. Costs are calculated per $1,000 of coverage on the basis of the average age. Although the policy normally covers only working employees and is thus relatively inexpensive, some colleges and universities continue minimal coverage into retirement. In such cases, costs rise reflecting the costs of claims

paid and expenses. Stabilizing reserves and negotiation of expenses are two chief devices for cost control.

In addition to a broad group life insurance program, which is limited by statutory requirements, a number of institutions have provided for survivorship income. These programs usually aim to provide some portion of a deceased employee's income to his dependents for a time, in addition to his life insurance lump sum benefit. Such a program is of course funded by term insurance, but in most instances statutory regulations limiting the amounts of group term insurance available are not applied to the coverage, the effect is more adequate provision for the young family, which is not feasible with group life insurance under present statutory limits. Where a broad program with institutional participation is possible, the coverage may be desirable from ages twenty-five to fifty, but since the costs are relatively high, such coverage is not generally feasible without an employer contribution. The difficulty in operating such programs relates to individual income priorities or decisions to participate, the costs being relatively high compared with income and other responsibilities. Significant institutional participation, except in cases where the numbers are large, is almost mandatory if group interest is to be sustained.

HEALTH AND MAJOR MEDICAL INSURANCES

Medical expense coverage is now a practical necessity in nearly all situations. The objective of such a plan should be to provide payment limits sufficiently high to provide adequately for expenses, particularly large or catastrophic expenses.

Many programs currently aim to provide first-dollar coverage for all employees under all circumstances, thus trading dollars with the insurer or service provider who must assume the high basic cost of administering the benefits. More appropriate in most circumstances is a program that, in effect, allows the individual to finance such normal costs as annual physical examinations, occasional visits to the physician, immunization shots, and the like, while providing relatively complete coverage for the catastrophe. This can be accomplished by a basic deductible, or by special provisions eliminating particular expenditures, such as shots for immunization. Near total coverage for amounts exceeding normal expense can be provided by a combination of base and major medical plans. Because of rising costs in evidence today, a catastrophe or excess loss layer can be added either at individual or institutional expense. It may be noted that when the individual is responsible for medical maintenance costs and some segment of his insurance costs, if the institution is able to establish a relation between premium and utilization, usage is better controlled than where total costs are assumed by a third party.

The coverages currently available are structured along two basic lines. Under the first, a base or first-layer hospital and medical expense coverage is

joined with major medical coverage with a deductible corridor separating the two coverages. The base coverage is frequently written by Blue Cross-Blue Shield or another service provider, while the major medical may be insured by one of the base carriers or by another company. In general, the base plan should provide a significant but controlled system of care. It should be limited as to time and amount and written specifically to exclude usage for routine care. The major medical, on the other hand, should be broadly written and designed to cover a large segment, 80 percent or more, of costs in excess of those bome by the base plan plu. the deductible corridor.

The other approach involves establishment of a large deductible or corridor, scaled to income, and designed to pay a significant amount of the eligible expense beyond the deductible amount. Such coverages normally are written by insurers rather than by contractors for service, and hence require a different control approach. Although the costs, if well controlled, tend to be lower than for the former, this type of program has the disadvantage that it often fails to provide needed care for many low-income personnel.

Programs in Use

Health care and major medical insurance was available to nearly all employees of higher education in 1968; in one quarter of the covered institutions, the employer paid the full cost of employee benefits under the basic hospital expense plan, and in nearly 40 percent of the cases, also paid the costs of the major medical for the employee. In nearly 40 percent of the cases, the employer and employee shared in the cost of both benefits. Since that date, the number of programs wholly funded by employers has nearly doubled, although an accurate count for 1971 is not yet available. At the other end of the spectrum, it was estimated in 1971 that fewer than 10 percent of all institutions made the employee wholly responsible for medical benefits, while in another 30 percent the employer and employee shared the cost for both employee and his dependents.

A number of institutions also contribute to dependency coverages, the amount of the total contribution frequently being equal to or greater than the cost of the employee benefit. On this basis, it is estimated that more than 70 percent of the employees of higher education institutions pay nothing for basic medical, including major medical, benefits for themselves. In 1968, approximately 61 percent of the basic medical plans covering employee dependents, and nearly half the major medical coverages for dependents, were paid for by the employee. Following the trend established in industry, however, employer contributions for major medical insurance for employees and dependents have been increased at an increasing rate.

The rapid evolution of social pressure for provision of care would seem to argue for programs designed to provide care, rather than insurance or service benefits. If the institution is sufficiently large, or is able by virtue of cooperation among a number of groups, such as school district employees, to

establish such a service program, it is worth considering hiring personnel and providing facilities to operate it. Under these circumstances, both the level of care and the utilization of program are more controllable. Third-party insurance coverages for use when employees are away from their base and to provide for highly specialized types of care beyond the capacity of the service provider, offer means of filling out gaps in the program.

ACCIDENTAL DEATH AND DISMEMBERMENT

Coverage for accidental death and dismemberment has become increasingly common as the mobility of staff has increased with the ease of air and automobile transportation. A relatively inexpensive catastrophe coverage, it serves to supplement the workmen's compensation benefits, which are comparatively low in many states. Group costs for the coverage vary from $0.04 to $0.06 per thousand per month of continuous coverage. A number of institutions offer such coverage as a condition of employment, paying the entire premium. Although rates per dollar of face amount in these cases have tended to be significantly lower than in institutions that make the coverage voluntary, the premium volume has been about the same; the difference thus lies in the number of cases over which the loss experience is spread.

The value of accidental death and dismemberment insurance is questionable if the coverage is analyzed from a cost benefit view for the average employee, but it is a good special purpose program for employees who must travel or who are subject to relatively great exposures in course of normal occupation. If administered jointly with a university travel policy and partially or wholly financed by the university, it provides both protection for employees' estates and a basis for securing the college or university against third-party action by the employee in the event of accident during directed travel or performance of hazardous duties. The breadth of program coverage should be tailored specifically to the university's hazards, but no attempt to group or classify coverages by air, auto, or other exposures seems feasible.

GROUP LIABILITY COVERAGE

One of the most significant problems confronting faculty members and other professional employees of colleges and universities at the present time is their financial responsibility to the public, to their students, and to their colleagues, for acts, or omission of acts, involving professional judgment to which some degree of negligence or professional misjudgment may be imputed and for which, as a result, they may have financial responsibility. Only a few states claim sovereign immunity for their institutions, and presumably for their agents, from such actions. Since 1957, however, sovereign or statutory immunity granted to state agencies, scientific, charitable, educational, and eleemosynary institutions has gradually been eroded by judicial opinion and Congressional action until at present in many jurisdictions the public and professional responsibilities of the regent, trustee,

administrator, and faculty member have been assumed to some extent, at least, by the institution.

In states that claim immunity, the role of the administrator, faculty member, regent, or trustee may be defined as that of an agent of the state and thus immune to such charges and defensible by the attorney general. However, it does not follow that such will be the case in all instances, or that the defense will be accepted, if it is made; refusal to defend or failure of the defense leaves the staff member or regent personally liable for his own defense and any damages that may be levied. Financial liability in these areas, as well as in the classroom or in the practicum, imposes a line of liability on professional employees for which their protection is at best problematical.[5]

Many institutions in states that have abandoned statutory immunity provide blanket comprehensive liability and errors-and-omissions coverages for all regents, officers, and faculty. In states where the doctrine of immunity still exists, under such coverages the insurer is given the right to use statutory or sovereign immunity as a defense, but nevertheless the employee has a defender and, if adjudged liable, a source of restitution, which, incidentally, also covers the institution. Where there is blanket institutional liability, including malpractice, naming employees as additional insureds, other coverage is probably unnecessary. However, when the employee is joined in an action and the institution provides only institutional coverage, the employee often needs individual protection. In such cases, as well as when no institutional provision is made for these risks, group protection warrants investigation.

If adopted, the group program probably should cover at least professional liability for personal injury in the context of employment, including the fellow employee clause. Such coverage should also include liability for bodily injury and property damage in institutional operations and facilities and in vehicular operation on institutional business. Malpractice liability coverages should be available to medical personnel, but by endorsement at extra cost; malpractice in all other contexts, including speech, hearing, psychological conditioning, and reading clinics, probably should be available under the broad group blanket coverage. Errors-and-omissions coverages should also be provided as part of the blanket, with special regard to regents or trustees and administrative personnel, to cover both the programs in which they are directly involved and any personal responsibility associated with their employment.

Because of the hazard and the variety of conditions under which institutions operate, a group coverage available to individual staff members that provides protection for them in their employments could be made available. While this solution is less than optimal, it provides some security to

[5] There is no defense where the act is illegal. For example, discrimination or reverse discrimination are illegal acts and, if intentional, would subject the official to whatever penalty or liability was assessed.

the individual employee and to his institution. The coverages are available in most states on a variety of bases and costs, and each institution should undertake to negotiate a coverage suitable to its environment, with the aid of legal and insurance counsel.

Other Personal Insurance Coverages

A number of companies are testing mass merchandising through payroll deduction plans of employee homeowners', auto, permanent life insurance and other personal coverages. These plans have little to commend them, since the institution by agreeing to utilize them becomes associated in the mind of the insured with the carrier. Thus, any cancellation or adjustment problems, as well as rate changes or other administrative matters, come to involve the university; however, the institution has literally no control over any of these matters. It is responsible for selecting the carriers and plans and for arranging the payroll deductions and making the monthly payments to the carrier. Beyond that, however, except for moral suasion, it has no real authority to act.

True group coverages in these areas will probably emerge in due time; such plans have some social advantages, but will probably require employer contributions, programs of loss prevention, and other controls which affect costs. The choice of whether or not to proceed in these areas should be made with full appreciation for the longer term implications. Once started, it is difficult, if not impossible, to close down such a program.

NOTE: The Social Security Administration periodically issues pamphlets summarizing benefits. See *Your Social Security* currently available.

IX

The Insurance Market: Higher Education and the Insurance Industry

As has been indicated, the insurance mechanism is a social device for pooling the risks of financial loss due to specific hazards. In effect, the buyer of insurance exchanges financial security against losses due to named perils by payment of a premium to an insurer who, by contract, assumes responsibility for financial losses to whatever limit is agreed.

Since the insurance market is "highly developed and technical," if for no other reason, it is incumbent on the risk manager of an institution to be absolutely certain of his needs and to negotiate as fully and as completely as is necessary, before the fact, the terms of whatever contract is to be purchased. In most institutional circumstances, standard policies, if used at all, will need to be modified by a number of specific endorsements. More frequently, institutional package policies or a manuscript policy developed specifically for an institution will be the result.

Unless the insurance officer is versed both in insurance and law, he should be supported by counsel in both areas in the negotiating and executing stages of the process. This is not to suggest that the insurance industry engages in sharp practice, or seeks to avoid its responsibility by use of terminology or limiting contractual clauses. Rather, it is to point out that there are technical and legal terms and conditions, developed over centuries of practice, which are commonly used with specific meanings to those engaged in the business but which may not be clear to, or appropriate for, the college or university business officer seeking coverage. In nearly all cases, if the underwriter understands the institution's problem, policies will be adapted to suit the circumstances and language appropriate to the situation will be substituted for the usual. A price will be exacted for the modification, but, like the price for the basic cover, it can be evaluated simply and easily by comparison with the gains that will result.

APPROACHING THE MARKET: THE PRESENTATION

In approaching the insurance market, it should be clear to the university official that he is dealing with sensitive human beings engaged in the performance of a social function and that their actions are based substantially on their judgments of a situation. Accordingly, the market should be approached in an open fashion, the university placing its best foot forward in each of the areas where problems have developed. Given the large-scale "scare" stories of campus violence, and the several highly publicized incidents involving personal injury as well as large-scale property damage, an insurer cannot be blamed if he has reservations concerning college or university coverage. Indeed, he would not be an underwriter if he did not have those reservations.

The job of the college official must be to present all the facts germane to the perils, hazards, and exposures in the best possible light for evaluation. This means:

(1) The institution must have realistic property values based on relatively recent appraisals or updates, including a definition of the valuation objective, *e.g.*, actual cash value or replacement value. (See Chapter IV on appraisal and inventory.)

(2) The institution must have realistic inventories and a system for their maintenance that makes it possible both to locate and to evaluate contents of all facilities to be covered.

(3) The institution must have analyzed its operating programs, must be aware of the hazards incident to them, and must have devised reasonable plans or programs for their security.

The presentation for the insurer should be complete. All the facts concerning property and program, including employees and students, should be available in concise form for review. Similarly, the institution should know its hazards and their financial implications, and should have a clear idea of what it needs by way of insurance coverage, including a rationale for the insurance program developed. Putting it differently, the institution must have complete descriptive information available and it must have drawn precise specifications for coverage.

Many institutions have for years considered their dealings with the insurance industry as relatively insignificant, often delegating the function of handling the policies to a broker or agent who has been associated with the institution as a board member, student, or alumnus, allowing him, in effect, to place the business without particular scrutiny. During the 1920's, 1930's, and perhaps the 1940's, when the numbers involved were reasonably small and the environment less prone to assess blame and demand recovery, the method was probably not seriously in error. In the present social environment, however, with the increases in losses and premiums, many institutions now find that property and liability insurance charges, for something less than total coverage, approach 0.5 percent of budget; some find

it impossible to obtain coverage through normal channels. The traditional method must thus come under scrutiny. Since the job of managing risk directly affects the financial well-being of the institution, it must be a part of financial policy management. Delegation of the power to a third party who has little or no familiarity with the actual operations of the institution makes no more sense than buying equipment without knowing the purpose it is to serve or the specifications of the piece selected.

PLACING RESPONSIBILITY FOR MANAGEMENT

As was pointed out, the first step in risk management is to place responsibility for the financial decisions in a particular official. Second, it should be made a matter of institutional policy that major risk decisions be discussed by the principal policy officials of the institution, the board of trustees or regents, and appropriate state officials, so that a policy decision may be reached. A risk manager-business officer should then make it his business to develop the necessary materials and to present the pattern of risks and exposures in such fashion that the problems will be clear to all.

Utilization of a university-related agent, simply because traditional ties dictate the method, must be carefully examined in the light of policy and program development, when the job has been defined, the selection should rest not on tradition but on facts as they emerge. The official designated should involve himself directly in the management process, insisting that appropriate representatives of the carrier, both from its underwriting and its engineering agencies, be invited to the campus and exposed to program and plant personnel in order to get an impression of the institution, its management, and its operating policy. Underwriting risks with values in millions of dollars without firsthand knowledge makes little sense, either for the customer or for the carrier.[1] It is clear that a primary step involves education of both university and carrier, and that the responsibility for initiating it rests with the institution, not the carrier.

Large Universities

The world of higher education consists of a number of institutions varying in size and exposure from the very small institution of 100 or fewer students to the major state systems, some of which have more than 100,000 students and own properties valued at a billion dollars or more. The larger institutions, those whose property values are in excess of $100 million, whose enrollments exceed 10,000 students, in most cases need a full-time risk manager whose job is the administration of property, liability, and fringe benefit risks. Such institutions will tend to evolve good relationships with

[1] In a recent survey by NACUBO of carriers and higher educational institutions, it was found that only in exceptional cases had there been any contact between underwriter and institution before the fact—or, indeed, after the fact. When contact had been made, the relationships were better in the negotiation of contract; the rates were also usually better.

carriers and the insurance market generally, and will thus be in a position to provide for personal inspection and understanding of the specific problems to be insured.

Smaller Colleges and Universities

Problems of management are somewhat different in institutions with fewer than 2,000 students, and whose property is worth $30 million or less. Such relatively small institutional risks do not lend themselves to any large degree of personal contact by the carrier. The problems of this type of institution are of a different order in several respects. In general, small liberal arts institutions are located in suburban or rural settings, and their requirements in facilities protection, program, and student or public management are not like those of the larger urban institutions. Since the coverage they need is much smaller and the premium cost lower, there is little necessity for the underwriter to continue contact with the institution—if, indeed, any contact is made at all. Such institutions must develop documented specifications, including full detail as to loss history, program scope and operation, and values that will tell the whole story. They should also seek representation by one of the larger agency or brokerage houses which handle other institutions of similar character, and so have to establish a sufficient market to become familiar with it.

Institutional Approaches

NACUBO has established relations with the insurance industry through a committee representing the insurance associations and a number of carriers. Through contact with this group, the insurance concerns of higher education and an understanding of the specific problems and issues have been transmitted to the field. References to the work of this committee may assist the business officer and his agent in establishing relations with a carrier concerning a specific institutional program.

Small college pools have been established in one or more cases, based on development of complete information by all participants and what amounts to a pooled marketing approach to the industry. In one instance, the consolidation of interests into a single approach has resulted in the availability of insurance to all members at considerable reductions in premium to institutions that had been experiencing difficulty in obtaining coverage at all. There is force in numbers and values when the market is approached.

THE CARRIER'S POINT OF VIEW

Some understanding of the carrier's approach will assist the institutional business officer in tailoring his specifications.

The insurance industry has traditionally maintained information and data on "institutions" as a category. Thus, higher education has been

classified, for rating purposes, with hospitals, churches, and public schools. The experience of other public institutional facilities has therefore affected the base rate applied to both property and liability risks of universities and colleges.

Beginning with data for 1969, the underwriters, under stimulation by NACUBO and a number of institutions, arranged for the segregation of college and university data so as to better appraise that segment of the total institutional risk. It is vital, because of the lack of specific data covering institutions, that each college or university have good data covering its own experience and sufficiently detailed description of facilities, protection devices, and programs to allay fears for the future. Reference to the NACUBO survey and to work of others in this field may help call attention to the differentiation of higher education from other institutional experience.

RATES AND REGULATIONS

Insurance companies are subject to rate regulation in each of the states. In order to write a coverage, if it is non-standard, an individual filing of the coverage and the rate must be made with the insurance commission. If this is approved, the coverage may be issued; if not, it must be adjusted to suit the special circumstances and criteria of the regulating agency. It should be noted that manual rates are applicable, and that policy examination and evaluation are not required when the standard policy is used, as long as the coverage involves values of less than $100,000. Thus, in any coverage using a deductible of less than this amount, the standards of the state and the manual rate, as adjusted for the specific case, must be used. Whenever the values at risk are $100,000 or more, the case is individually rated, and except for general surveillance, including policy approval, there is no detailed regulation of the operation. Many insurers, therefore, seek to establish terms for institutional business that take the matter out of the category of detailed regulation.

For the institution whose income and asset pattern does not warrant such treatment, layering of the coverage so that the principal insurance program covers amounts in excess of $100,000 makes a good deal of sense. In such contracts, however, it must be made clear by endorsement that the insured has the right to insure the deductible separately, a right normally precluded by the contract. Where possible, it is good policy to establish a deductible of sensible proportions, supported by self-determined cash reserves, or to develop over a period of time a self-insurance program for the deductible.

SELF-INSURANCE

In the present environment, each institution should also examine its historical pattern of losses and determine the relative amounts of self-

insurance it can undertake. As the size of the deductible or of the first layer of coverage increases, the chances of loss on the remainder and, hence, the pure loss costs for the insurance to be purchased diminish. Since the market premium now includes a considerable sum for the cost of adjustment of prospective loss, it is logical that each insured compare the costs of insurance at each deductible level on the basis of its own experience and, in addition to establishing and building reserves for this purpose, set aside such additional reserves as are possible from the premium differential. As the size of the fund increases, while the probabilities remain essentially the same, the size of the self-insured layer—in effect, the deductible—may be increased. The effect is to reduce the amount of risk transferred and, accordingly, the risk cost.

If this procedure is elected, the institution must reserve the cash and merge it with its endowment or other permanent trust funds so as to have monies available to deal with losses when they occur, including operating costs of adjustment.

Self-insurance is obviously desirable for the large institution. As long as the present environment continues, the differential between the costs of commercial insurance and of self-insurance likely will be more than enough over a period of three to five years to permit the establishment of the appropriate reserves. In moving in this direction, however, the business officer should be certain that both trustees or regents and administrators are aware of his decision and of the possibility of losses in the immediate present. Since it is entirely possible that a loss will occur in the early years of self-insurance, a cash reserve must be immediately available to prevent absolute failure of the plan.

Further, when such losses do occur, one should not lose faith in the plan, even if the reserve is exhausted at the end of the first year. Insurance averaging procedures assume that losses will occur and will have to be paid and that reserves will be accumulated in periods when losses do not occur. Those involved in administering the program, however, must be prepared to accept the variations in level of cost and of the cash reserves required to carry it.

It has been suggested that pools of institutions of various sizes be formed to create cooperative self-insurance ventures, with stipulated maximum responsibilities. There is merit to this proposal, in that the larger the base, the easier it is to accumulate the costs of losses through averaging. However, it is essential that the partners in the pool be in agreement on the values at risk and on the methods of treating them Moreover, the potential magnitude of catastrophe on any single campus makes it necessary that all agree to pledge significant portions of their total values to meet such losses, if they occur, or layer the coverage and bring others commercially able to handle such losses into the picture. For best results, a third party should manage the pool, and a complete understanding of the operations, including the basis for pooling itself, must be developed and accepted by all parties.

When such pools are layered, if layers beyond the lowest are undertaken, they may, in effect, become insurers, operating just as commercial insurers. The pools may then either insure directly and reinsure or organize syndicates in which they participate to provide the coverage. In the organization of such a pool, all values are syndicated or reinsured, as the case may be. The first layer should be substantially or wholly retained by the pool. In layers above the first, the proportion retained may be reduced without serious injury to the position of the pool itself.

Similar pooling arrangements have been contemplated by a number of the national brokerage houses. As long as appropriate information is supplied to the representatives and used effectively, such an arrangement is advantageous to the institution, but the business manager should not accept such a relationship out of hand without a comparative basis for evaluation. If he elects to join such a third-party pool, the manager should also seek independent evaluations and competitive bids so as to assure appropriate pricing and coverage. This is not to say that the institution should seek to operate independently of its agent; rather, the competitive bid proposal and specifications should be issued and circularized sufficiently so as to obtain some comparative results. When such is undertaken, the agent or college manager should inform each of the interested parties that others are involved.

INSURANCE SPECIFICATIONS

The first step in creating an insurance program is to develop specifications. These include, first, an inventory of physical facilities and equipment together with values; and, second, an analysis of the risk potential and costs, relative to the operating statements of the institution, developed in preparation for a determination of the level of coverage needed and the size of the deductible to be used. When the data have been collected and the analyses completed, they should be reviewed with top administration and the trustees' or regents' committees for verification of the policy decision.

Property. Forms for the summarization of property values which have been developed by various groups represent the general types of information that should be available.[2] More detail may be sought by particular carriers in some areas, less by others. Since the data will need to be adapted for each institution, the forms are cited solely for illustration.

Liability. An analysis must be made of the institution's program with a view to developing a listing of the exposures and hazards to which institution, staff, and student, as well as the public, are subject. The objective is to obtain as complete a list as possible of first- and third-party risks that arise from institutional program operations. Each of the basic risks should be evaluated by its history of occurrence, to establish a kind of frequency measure.

[2] See Bernard John Daenzer, *Fact Finding Techniques in Risk Analysis* (New York: American Management Association, 1970)

Information on severity, to whatever extent it exists, should also be accumulated. Both compilations should list incidents rather than suits since risk potential is based on the number and kinds of incidents regardless of whether they resulted in charges.

Workmen's Compensation. A similar documentation should be compiled of the workmen's compensation exposure. Although the insurance carrier handling that risk will be able to supply loss runs showing the actual history for a period of time, the college or university risk manager should consider developing a personnel data file from which such information can easily be excerpted.

Crime. Finally, the losses due to criminal activity, robbery, theft, employee dishonesty, mysterious disappearance, vandalism and malicious mischief, and riot and civil commotion, must also be listed separately and evaluated by frequency and severity. In each instance, the steps taken by the institution to establish controls and to avoid the risk should be fully detailed. Copies of personnel policies and procedural manuals should also be accumulated for use with hazard data and for presentation.

Analysis and Program Design. Once the data have been compiled, risk analyses should be made of each area, and the potential related to the operating position of the institution to determine the coverage needed. The risk manager-business officer then should establish parameters of coverage and should be prepared to defend his positions in administrative and governing board meetings. When there is general agreement on policies and procedures, the program is ready for presentation to the industry.

Agents, Brokers, and Consultants. As a further step, especially when the institution does not have a professional risk manager, the university's insurance agent or broker should be brought in to review in detail the specifics of the presentation. His counsel should be sought on techniques of coverage and the expected cost of variations; if modifications in the proposal are suggested, these should be evaluated and eliminated or built in as alternatives for the use of bidders.

In some instances, the business officer may have reason to question the technical proficiency of his agent or broker with respect to institutional risks. If, for example, his is the only institutional risk of consequence in a territory, it is unlikely that the broker or agent would be as competent as agents who handle a large number of such risks. In such cases, as well as when there is some other reason to question the specific technical competence of the agent, the business officer should probably engage an outside insurance consultant who specializes in institutional operations. There are a number of these in the United States, each competent in particular areas and able to provide specific counsel and guidance to the institution in the development both of the specifications and of the program.

The NACUBO Committee on Insurance hopes to stimulate the development of a detailed risk management manual which will analyze

specific perils and risks in the institutional setting, suggesting a number of specific alternative coverages and providing details concerning the contracts. Other services have developed specific checklists. Chapters V through VIII of this *Guidelines* also suggest a number of the coverages that may be required and some of the specific ways of using them. These sources, used in combination with professional advice, may provide valuable assistance in the design of the specifications.

It is important that the consultant should not be engaged for the purpose of accumulating internal information, since this is a proper function of the business office and should be performed there. The consultant should be engaged to assist in identifying hazards and exposure and to provide ideas in the tailoring of specific coverage designs; he may also be of great value in evaluating the specifics of coverage once the proposals have been received In each case, however, the institution should examine his cost effectiveness experimentally before entering a long-term contract. Most consultants can supply specific material concerning their services and estimates of the time required to complete them.

Competitive Bids Procedure

Once the specifications have been developed, discussed, and agreed to, competitive proposals should be solicited from a select list of carriers. Neither tradition nor an historical arrangement should be maintained simply because it is easy or avoids consideration of the problems at issue. Through careful consultation with agent or broker, consultant, and, if information is not otherwise available, with the NACUBO national office, a select list of carriers interested in higher education insurance should be compiled. Local representatives should be checked, and, on the basis of experience in the area, the top three or four carriers should be asked whether they are interested in participating. Each who replies affirmatively should be delivered a set of the specifications.

Each carrier should be told to formulate its bid in two ways. (1) in accordance with the specifications as submitted; and (2) in accordance with such recommendations or modifications as it deems desirable under the circumstances, with specific price adjustments for each such modification.

A specific time limit, usually ninety days, should be established for bids in order to give carriers adequate time to ask for any information they need in addition to that supplied by the institution and to evaluate the entire package. If appropriate data, both historical and current, are available, there should be few problems in this respect. Depending on the size of the case, individual visits or inspections may be required, and specific information on institutional policies and programs may also be needed. These should be supplied as rapidly and as completely as possible in order to permit thorough and realistic evaluation of risk and pricing factors.

Many companies operate through regional and agency structures, while others operate directly. There are likely to be differences between the responses of such carriers, as well as between those of carriers in other areas and those of carriers in the area of the insured. Some of these differences will have a foundation in history, others will not. Where wide deviations are evident, they should be questioned to assure accuracy or to discover, for the information of the institution, the reason for the pricing variation. In some cases, differentials may point to a condition or conditions that may be easily remedied by the institution; in other cases, they may simply represent differing judgments that may or may not be modified by discussion of additional information. It is notable that in a recent bid procedure, in which all bids were based on the same specifications, the prices ranged from approximately $160,000 to $560,000. In view of such wide differences, it is in the interest of the university to get a feel for the market value of its operation and to be able to make reasonably accurate judgments on the basis of actual data.

Finalizing the Program. Once the data have been assembled, the institution has two alternatives: (1) it may accept the lowest bid and call for issuance of a contract based specifically on it; or (2) wishing to consider one or more modifications, it may elect to negotiate a contract or contracts covering the risks more specifically. If the latter is elected, counsel should be consulted to assure the legality of the procedure in advance.

On conclusion of the procedure, all modifications suggested and any recommendations of specific carriers should be carefully considered as potentials for the next set of bid specifications or subsequent program modifications. All should be carefully evaluated, and the rationale for including or excluding the proposed changes made a part of the institution's record.

INDUSTRY AND MARKET STRUCTURE

Insurance contracts may be written by an agency, a brokerage firm, or directly by a company.

Agency System. Agency companies deal with the market exclusively through agents, individuals designated to act for the company. The institution should contact the agent, who will in turn carry the proposals to the home office, secure the information, submit the bid, and act for the company. The agent, although he represents the interests of the client, is in fact legally performing for the company and may thus bind his company, that is, commit it to a particular risk. As the size and sophistication of the coverage increases, the latitude accorded the agency will of course become limited.

In addition to his liaison and technical functions, the agent also serves as a representative of the insured in relations with the company: he facilitates

the handling of claims, the securing of technical or engineering information, and the underwriting judgments. A good agent is an invaluable asset in the management of risk. but, as was suggested earlier, depending on the size of the case it may be desirable to contract with him directly for the specific duties and functions he is to perform, making compensation depend on his services, not the value of a contract purchased.

Brokerage Firms. The insured may elect to utilize a brokerage firm to represent him with one or more carriers. It is the broker's function to search the market for his client and to produce for him the broadest spectrum of coverages and prices available. A broker who is technically sound can be an invaluable assistant to the business officer-risk manager, helping assure the soundness of the specifications and their applicability to the market in which the policy will be placed. A number of national brokerage houses seek to represent certain classes of clients or pursue particular specialities. Engagement of one of these houses frequently makes it possible for the insured to capitalize on the skill of a group in solving a particular kind of problem, or to pool risks with others for purchasing purposes, obtaining the leverage of the broker in making these arrangements.

Some brokerage houses that have developed specialities are now attempting, through various combinations, to utilize a carrier or combination of carriers to handle a specific set of institutional risks. Although the institution utilizing such facilities may gain a considerable advantage, there is a danger that the experience of the group, including the relations between the brokerage firm and the insurance enterprise, will affect the relations between client and carrier. There is little that can be done to anticipate such an effect except to receive competitive proposals and to rely on the judgment of counsel and consultant with respect to the carrier and its relationship currently to the business. Relating to a combination of brokerage and agency personnel usually will provide for checking, thus assuring a reasonably secure arrangement.

Many agents perform many of the same functions as brokers, having licenses in more than one company and operating to secure information from combinations of carriers for a single client. By the same token, many brokerage firms have established relationships with particular carriers and, in the performance of their function, tend to be in a position similar to that of any bona fide agent of that company. The problem, to decide between them, should be approached through a realistic study of strictly comparable data on the risk and on the competence and effective service of the representation.

Direct Writers. In addition to companies that operate through agents or brokers, there is a group known as direct writers who deal directly with the client through management personnel. In these instances, there is no third party in the relationship, the insured and the insurer negotiating a contract on the basis of whatever facts are presented for analysis.

Stock and Mutual Companies and Reciprocals

The insurance carriers are generally organized either as stock or mutual companies. The stock company, of course, is a proprietary organization operating for profit. The mutual is an organization of insureds who join together to provide security to each other by sharing losses. In practice, the large organizations perform substantially the same functions in a similar fashion. Management in both cases has responsibility for providing the judgments and administering the operation. Although historically the focus was different, the performance has tended to become about the same. Difference in cost or operations are more a matter of the situation than the form of the enterprise. Reciprocals are organizations designed to share losses. Associations for a purpose, they tend to manage their operations effectively, often requiring a high degree of loss control performance from members.

Determining the Role of Agent or Broker

The degree of reliance placed on carriers or carrier representatives for service will be determined by the value of the services they render and the price paid for them. The agent or broker who merely calls for the specifications and delivers them to the carrier, thus forcing the negotiations into a relationship between client and carrier, has little value. On the other hand, the agent who works carefully with the client in the development of the prospectus, seeking specific information he knows to be of use to his carrier, representing carrier and insured alike in the negotiating process and serving continuously thereafter in development of the program, serves a very different function. Where this is the case, his services may be of great value; indeed, many agencies and brokerage establishments have staff members who serve, in fact, as risk managers for particular clients.

Small institutions can do little other than accept the procedures established by the company and the market for handling its type of business. For the larger ones, however, technical questions become significant, and the client may need to make some realistic decisions with respect to agent retention and compensation. In nearly all cases in which the volume of business is large, even though there may be an exclusive agency contract, both the carrier and the agent will consider a negotiated fee in lieu of commission to agent or broker. In these circumstances, the institution is in fact pricing its insurance in terms of pure loss experience and pricing the insurance services rendered in relation to cost of performance. Whenever the annual premium for property and liability coverages amounts to $100,000 or more, the institution can consider the question of negotiating a fee, as opposed to paying commissions for the handling of its business. In this fashion the services and the manner of their performance can become matters of contract, and the insured can be certain that they will be performed because the compensation of the agent-broker depends on them. Where the service is

appropriate however, and the present arrangement satisfactory, there is no reason arbitrarily to change it.

In a considerable number of cases, once a line of business has been developed, and in all cases where the company operates solely through a regional managerial structure, arrangements may be negotiated directly with the company. In these cases, there are of course acquisition costs built into the premium charge, but the costs are not based on premium volume; they are a function of the service rendered, which is appropriate. As the size of the premium rises, the value of working directly with a carrier or negotiating specific services with an agent or broker increases; a $1 billion institution with a major risk management establishment in its own managerial structure should not be required to pay an agent or broker other than for the specific services rendered; their value may be little, or great, depending on the contract or agreement between client and agent.

This is not to discourage the use of agents or brokers, for indeed they serve a very real purpose, but to indicate that each institution must decide for itself the best arrangement for its business, given the constraints within which it must work. Some limitations are based on premium volume or company size; beyond that point, the question is to decide which functions shall be performed in-house and which shall be performed by third parties and charged to, or made a function of, the annual arrangement between company and agent or client and agent.

A final note on this point: Carriers that operate exclusively as direct writers or as agency companies may be limited in the relationships they can establish with a particular institution. The status of the operation and the people involved both should be explored before the negotiation of any specific coverage or contractual relationship. The risk manager must know the restrictions as well as the strengths of all parties, once he structures his proposals for bids. Once he has determined a method of operation, it becomes difficult to modify it without modifying his own structure to match that of whatever procedure he seeks to adopt. Great care should be used in making this decision, with a view to the longer-run possibilities.

Selecting a Carrier

Since the business officer obviously will not, and should not, become a specialist in judging between carriers, he must find other means of weighing proposals received.

First, it should be noted that the insurance enterprise is highly regulated in all states, although the regulation varies in degree. Basically, risks may be undertaken by a company only if it meets such financial tests as the existence of a line reserve and surplus that meet the legislative or regulative criteria in its jurisdiction.

Second, and more particularly, rating services, such as A. M. Best Company, evaluate companies annually, both as investment operations and as

carriers, on the basis of complete financial data. Ratings from these sources are reliable and may be utilized with considerable security.

Third, the manager, through consultation with such technical personnel as the insurance consultant or representatives of the insurance commission of his state, may compare and analyze a company's specific reserves and surplus against various criteria to assure that adequate security for the institution has been obtained.

These procedures should be used in evaluating companies before soliciting their participation in a program. One would be foolish, for example, to place a $100 million property line with an insurance company whose property income is $2 million per year and the reserves of which are at the statutory minimum. Although such a company could organize a syndicate capable of handling the risk, unless there were specific technical reasons, it would not be wise to place the risk with a company whose total operation would be dominated by that risk.

Probably the most effective technique for handling an evaluation of this kind is to utilize third-party counsel familiar with the trade and with the various rating services. In this fashion, the business officer gains insights into the value or stability and security of the company itself. Further, he obtains an evaluation of the company's ability or willingness to engage in risk-taking in the present environment. One may note, for example, that a company which may be perfectly sound, even by the most conservative measures, may be a poor company to utilize for institutional risks because of attitude.

In addition to company and agent or third-party evaluation, the business officer needs to consider the means of keeping current his information on the market. The evaluations of the agent and broker, as well as that of engineering, claims, and other insurer personnel, may be as valuable to the institution as the financial evaluation itself. Since the insured almost always deals with the local personnel of the company, the relationships there established become as significant to a decision as the evaluation of the carrier in terms of home office personnel, procedures and financial status.

REEVALUATIONS

Reporting Services

In order to maintain currency with the market, the business officer-risk manager should subscribe to one or more of the major national weekly or monthly insurance trade periodicals. While 90 percent or more of the information will have little direct bearing on institutional problems, he should know of changes in regulations and in the environment of risk handling. The journals may also provide other types of information useful with respect to one's own operation.

In addition, a number of the consulting groups prepare and publish weekly or monthly newsletters that deal with specific problems. These serve

to update the manager's information and to assist him in maintaining currency with respect to his market. Regular reading of financial or business periodicals is another way to obtain current information with respect to transient conditions in the market. Since the financial officer will review these periodicals in any case, he should select those ideas bearing on risk and risk-taking generally and interpret them with specific reference to his own situation. New ideas on coverage, and on human, legal, and physical engineering, should be brought to the attention of the risk manager as well as the other members of the policy group to assure reasonable continuity of program development.

Insurance Surveys

Each institution should periodically conduct a thoroughgoing study of its insurance program and financial operations to determine their adequacy. An outline of some of the criteria for evaluation have been set forth in the preceding chapters. Once the program has been established and the contracts have been brought together to provide the coverage, the insurance agent or broker and counsel should be asked to review the contracts to establish that they are concurrent—that they refer to the same basic properties and risks and do so in a consistent fashion.

Another useful procedure is to request review of the program by an additional carrier interested in undertaking the business or by an insurance consultant engaged specifically to inventory the risks and to suggest coverages to deal with the problems.

A final step is to compare, in detail, the policies in force with the detailed survey of risks and coverages required. Once such material has been brought together, it is possible for the business officer-risk manager to evaluate his total program and to determine what additional actions may be required.

The normal insurance survey should cost the institution between 0.25 percent and 1.0 percent of the annual insurance premium, if it is prepared by a consultant who is limited to an examination of policies for consistency and adequacy in relation to the spectrum of risks set forth in the specifications. If a survey of the risks also is prepared, the costs will be somewhat larger. Good sense suggests that a sound program should involve a complete survey and bid procedure at least once every five years.

Insurance surveys are unnecessary if all policies are written by a single carrier and are brought together in manuscript form. If policies are put together individually and are bought separately for each of the risks, the necessity for regular examination is clear. It would appear to make sense to conduct a survey every second or third year to note any significant omissions in the changing coverage requirements. Where blanket or comprehensive covers in manuscript form have been used, however, this may not be necessary; an evaluation of program by the institutional consultant probably

is all that will be needed in the short term.

Finally, the institution should require that its consultant and its business officer-risk manager both be covered by an errors-and-omissions policy which provides coverage for any risk that, in the judgment of the individual named, requires no action at the time the judgment is made. The insurance-risk management features of both positions should be noted in writing such coverage for them.

Program Analysis

It is vital that the entire program of the institution be coordinated and so organized as to minimize the possibility of uncovered losses. This involves several procedures, all of which have been described earlier. Included are:

(1) The use of a checklist of coverages[3] relative to the schedule of risks to assure that all have been identified and evaluated and that they have been the subject of specific decisions.

(2) The next step in the process is the analysis of the existing insurance contracts to assure that they cover the risks and that, when there is more than a single contract related to a particular risk, each is consistent with the others and that provisions of all are concurrent; to determine that the contract form (manuscript or individual policies) is appropriate; to determine that appropriate loss prevention, defense, and other services are provided; and to assure that an appropriate structure of policies, such as layering, exists.

(3) The risk valuation procedure for both property and liability insurance should be verified, and the insurance contract(s) examined with respect to the value coverage.

(4) Evaluation of personnel to determine technical competence is essential unless a risk manager is available. An insurance counsel or consultant should be engaged periodically to undertake the analysis and prepare the appropriate certification.

(5) A complete cost analysis should be used to evaluate the criteria for selection and performance of the rating plan used; the net loss costs, expenses, and charging plan each being evaluated relative to the institution's balance sheet and income and expense statements.

(6) An evaluation of the bid procedure and its results is necessary.

(7) The evaluation of fringe benefits is different from that of property-liability contracts. For the protection of the institution and its staff, the review should assure that coverages are as stated and that the most effective operating alternatives and program decisions have been made.

On completion of the review and analysis, a report should be prepared and discussed with all parties to the program. The trustees or regents and principal administrators should understand the program, its limitations, and its results, if they are to provide support, and to require adjustment when such is necessary.

[3] See *Ibid.*, for example.

X

Risk Management, Institutional Administration, and Policy Making

In the first chapter of this *Guidelines* it was noted that the business officer of the institution, the president and other officers, members of the governing board, and in many cases faculty representatives, constitute the administrative group whose purpose is to initiate and enunciate policy and procedures for the operation of the institution. From a business viewpoint, this group has primary responsibility for maintaining the value of the assets and planning for income in relative balance with expenditures. In addition to costs of the staff and facilities involved directly in programs, expenditures also include costs of protection that are not associated with any particular program but are designed to minimize the effects of contingencies on the operations of the institution.

To achieve their objectives, and to acquit themselves of their responsibilities, the policy group needs to examine the spectrum of risks to which the institution is subject and to appraise them with reference both to its financial operations and its program. The business officer, being in effect the risk manager, must develop sufficient expertise so that he can realistically inform other policy officials and the board members of the alternatives and their costs. Decisions to protect the assets and the income of the institution will be based on his recommendations.

THE ORGANIZATION FOR RISK MANAGEMENT

The function of risk management involves the entire staff of the university in one way or another. As has been noted, direct responsibility for the basic function lies primarily with the chief business officer of the institution who has broad responsibility for the preservation of the resources of the institution and management of its income and expenditures. He, in turn, reports to the president of the institution, who has the responsibility for coordinating all operations. Both report to the governing board which, in the

last analysis, has the fundamental responsibility for making or approving and coordinating policy and giving policy direction to all the activities of the institution.

For a number of reasons, most of which have been discussed in this *Guidelines*, the risk management and insurance function has not been given the status of a policy area. Probably chief among them is the failure of management to recognize the difference between pure and speculative risk and the tradition of good loss experience on the college campus With the rapid growth of education and the increasing losses on- and off-campus, problems in maintaining security and in the purchase of insurance have multiplied. As a result, higher education and the insurance industry have undertaken a new examination of the risks and their management, focusing attention on a number of issues and program problems. There is need for attention to this functional area and the larger institutions, in particular, have begun to develop divisions of the business operation that have prime responsibility for it.

As has been noted, since the function of risk management is to protect or preserve the assets of the institution while minimizing costs of security, responsibility for the function should be located in the financial area, the person doing the job being on the staff of the chief business or financial officer of the institution. Because of his involvement in policy that also affects academic programs, some institutions have considered placing him on the staff of the president, but his direct involvement in financial affairs and his direct responsibility to the business officer and to the regents' or trustees' committee on business and finance argues strongly that he should be a part of the business function.

The organization of the office will vary with the institution and with the scope of programs and his responsibilities. Its functions frequently are divided into two broad areas—risk management or loss prevention, and insurance. In all but the largest institutions, the insurance functions are substantially performed by a single individual; if the volume of work is very large, they may be divided between property and liability coverages and personal or fringe benefits coverages, the entire operation being coordinated by the risk manager or assistant business officer for risk management.

In its broadest form, the office responsible for risk management may also have responsibility for campus security, including inspection of facilities and direction of police activities; the risk manager may also be given a role in facilities and program planning, although these latter functions normally are performed elsewhere in the institution. Herein lies one of the major problems: the risk manager must have sufficient knowledge of the activities of the institution to evaluate them and assure that they are programmed from the beginning with a view to the risks they create. This is also one of the major reasons for placing responsibility for the activity in the financial operation, since through constant contact with payments on account of

program and personnel, familiarity with developments in all parts of the university will be a by-product of the accounting and reporting functions.

A first requirement of an effective risk management program is the direct involvement of the governing board in publication of a broad policy statement on risk management and in the review of all policies and regulations affecting programs as well as operations in the light of good risk management principles.[1] Similarly, their periodic review of policy and program generally with respect to risk management and analysis of the entire program, including insurance, is a second requirement. For this purpose, a close reporting relationship between the business office and the trustees' or regents' committee on business and finance is essential.

Periodic third-party reviews of programs, similar to site accreditation visits, by experts from other institutions or by outside consultants, should be undertaken. Annual reports of each of the major functional lines of the institution, academic and financial, should contain risk management studies developed by those responsible for the areas, independently of the risk manager and his staff.

The business officer himself becomes the chief policy spokesman for the institution in this area, unless he has delegated the function to a titled assistant who has authority to act in this area. His function should include direction of the activity and its coordination with the other functions of the institution through the personal and functional relationships established at the vice presidential level.

In its operations, the risk management office must have line responsibility for all property and liability insurance functions, including inspection, review of academic program operations, examination of specific risks, such loss prevention activities as training, claims adjustment, and reporting, as well as responsibility for counsel in planning all insured fringe benefits and pension programs and negotiations with carriers. In many cases, a number of these functions will be delegated to other offices that report to the chief business officer; security and inspection procedures may be given to the plant department, program evaluation activities may be delegated to the academic divisions, with counsel from the risk management office. In this event, the risk manager is the technical expert, the coordinator, and the advisor to all groups; it becomes his responsibility to insist on the involvement of all relevant personnel, including planning and architectural advisors, in each of the activities that creates risk. He provides guidance and control through coordination, rather than through direct line responsibility for program execution.

Since fringe benefits administration is normally a personnel function, the programs should be administered by that office. To whatever extent

[1] See pages 23-26ff for examples of policy statements and techniques of their application.

insured programs are involved, however, the risk management office should be directly involved in their development and responsible for the financial and contract aspects of them. For example, the risk and insurance manager should be involved in preparation of specifications for each fringe benefit such as long-term disability income insurance; he should prepare alternative cost estimates and recommend the technique to be selected, although the personnel officer and the employee representatives should in fact negotiate the terms of the benefits with the insurance officer's financial and technical advice. He should make recommendations with respect to the form of other insured programs, as well as self-insurance in particular cases, and should be responsible for claims administration and for relations between the insureds and carriers.

Each institution will have to establish its own organization to manage the area. Although certain lines of responsibility and functional relationships are required, the necessity for technical expertise and personal cooperation in the fulfillment of the functions makes it desirable that each combination be organized as much on the basis of personality and facility as of administrative line.

Considerable differences in program and responsibility result from the size of the operation. Obviously, small institutions cannot be as completely structured nor as fully organized for the performance of these functions as larger ones. Different arrangements for the sharing of resources and skills will be necessary. Some observations on techniques for handling this problem are made later in this chapter.

One must conclude that the function of risk management and insurance is a significant one in the total policy organization of the institution, and that every effort should be made to assure attention to the function and support for operating personnel who implement the program at all levels in the institution.

The Risk Manager and His Operation

As has been noted throughout this discussion, the number of institutions that have sufficient values at risk and exposures in programs and operations to warrant a full-time risk management operation is limited. From one third to perhaps one half of all institutions could profit by combining all insurance coverages and the insured fringe benefits in a single campus-based risk management and insurance office or division.

For the remainder, these functions should be so combined that one person is responsible for their coordination and for planning and development. Although the responsibility will occupy only part of his time, he will have line and staff relations with a number of staffs—with the controller's and payroll offices in verifying contracts and making payments; with physical plant in safety engineering and plant maintenance; with personnel in safety training, accident control, and fringe benefits; and with the business,

planning, and academic policy offices in reviewing the scope of the risks and evaluating exposure. In the last analysis, he will be responsible for preparing and presenting the catalog of risk, for making evaluations and recommendations, for handling the bid procedure, and for negotiating contracts for coverage. Unless one person is responsible, the problems likely will be passed over, since none of the officers in related functions will regard the risk management functions he is assigned as fundamental to his job, and none will accept more than passing responsibility for those functions.

There are several dangers in this approach. Although the business manager or financial vice president has the ultimate responsibility for business management, unless he is prepared to coordinate activities in these areas, a hodgepodge of arrangements, modified to suit their purposes by various departments, is likely to emerge, with considerable resultant risk to the institution. Similarly, unless it is made a part of conscious policy and procedural activity each year, the constant reexamination of the risks to which the institution is subject, both physical and personal, is apt to be lost sight of and the institution exposed to risks of financial loss that far exceed its capacity.

Risk management and insurance together affect a significant portion of the institutional budget, sufficient to warrant top-level policy attention on a regular basis by trustees or regents and academic and financial administrators. A written catalog of risks and exposures, together with evaluations of their potential relative to the institution's income and assets should be prepared and periodically reevaluated and updated, so that necessary adjustments can be made, these should in turn be reflected in negotiations for new or renewed coverages. (See Chapter IX.)

While the business officer in most universities, colleges, and hospitals is not and cannot become an insurance expert, he must designate a risk manager or coordinator and stimulate regular consideration of the physical and financial facts. Sources of information on risk and exposure and techniques for educating professional and other personnel have been suggested, along with techniques for obtaining the expertise required from among a considerable list of alternatives. The business officer does not acquit his responsibility unless he utilizes all the facilities available to him in the development of the catalog of risks and the evaluation of the exposures with a view to program decision making by the policy and administrative hierarchy of the university.

Insurance Reporting for Management and Public

Once the initial evaluation has determined the amount of risk the institution can cover by programs of safety engineering and other measures, decisions as to the methods of transferring and covering the remaining risks must be made. It is at this point that the insurance specifications are developed. (See Chapter IX.) The documentation should include detailed data

on facilities and programs for a five-year period as well as a record of all incidents, their treatment, and the financial losses experienced. Finally, the recommendations for specific insurance coverages, including deductibles, layering, and self-insurance, should be developed. This entire document should be submitted to the governing board after broad discussion at the top administrative level, with a recommendation for its adoption. Board committees should then react to it and should adopt whatever broad risk management policy statements seem to be required to support it.[2] Once the program is adopted, the material should be submitted to the market for bid and negotiations undertaken in the manner described in Chapter IX. Bids and carrier recommendations should be made a matter of public record and should be considered by both policy officials and board personnel.

The steps taken in negotiating the individual arrangements should then be documented and added to the risk management report prepared for board review, and the final program, including copies of policy or policies, agent, broker, consultant, or carrier analyses, and counsel's opinion incorporated in the document. The entire matter should then be reviewed by the board of trustees and the administrative officials of the institution. Feature stories describing the essence of the arrangement should be prepared for students, alumni, and the other institutional publics, as well as for general distribution. Incorporated in this presentation should be examples of particular steps taken by the institution to minimize loss as well as to preserve and develop assets.

CONCLUDING OBSERVATIONS

Attention to risk management at the policy level is essential, and in every institution the business office must coordinate policy and procedure on the basis of a complete plan for dealing with all risks and exposures. Failure to evolve and maintain effective procedures inevitably reflects on the president, the business officer, and the governing board of the institution. As has been noted, many colleges and universities can afford, by combining insurance and fringe benefit activities, to create a position substantially or wholly devoted to risk management, particularly if all related functions are drawn together into a single position for the purposes of administration. The development of staff in this area, although it may appear to result in an immediate increase in budget for personnel, should result, in a relatively short time, in lower administrative as well as program costs.

In the smaller institutions, of course, use of third-party expertise, with strong coordination by the chief business officer, will accomplish much the same result. It must be clear that the responsibility for risk management rests with the business office, and that its financial and policy advice must be considered in program development.

[2] See footnote 1, Chapter III.

The risk manager's role is a significant one. His functions must include both policy and procedures if he is to function effectively for the good of the institution. The application of expertise in insurance to both personal and physical risks—to fringe benefits as well as property and liability insurance—may permit real savings in costs and administrative gains for staff and management alike. Whatever the combination, however, the management that does not build and support the function loses a major opportunity to demonstrate its skill and provide security for its operations.

XI

Evaluation of Program

This *Guidelines* has outlined some of the alternatives for effectively managing an institution's physical and personnel risks. At each step the procedures suggested included a system of checks that together constitute program evaluation. In perspective, each of the steps in the process of program building, from the point of defining and cataloging risks and evaluating exposure, must implicitly contain a means of checking for accuracy and evaluating the judgments of those who have brought the material together and made their recommendations. Program risk evaluation, for example, requires the participation of academic officials as well as of representative faculty members from each of the disciplines, to assure that all have been identified and that the risks associated with the institutional exposure have been correctly appraised and dealt with appropriately from a policy standpoint.

PROGRAM IMPACTS

Some of the alternative institutional responses are limitation of programs, use of legal waivers and consents, legal avoidance of risk, and risk assumption or transference, the costs of which are borne by the insured or by the general operating budget of the institution. The alternatives must be measured for their impact on programs and the choice based on wide participation within the academic community. The institution has a social responsibility to maintain programs that will deliver knowledge or training in accord with need, as well as a financial responsibility to its various publics to assure by all the means at its disposal that the most appropriate decision with respect to programs has been made and that recoveries commensurate with actual loss, where responsibility exists, will be provided.

FINANCIAL IMPACTS

The broad financial evaluative techniques also have been analyzed and discussed. To arrive at the most effective financial balance, including all possible alternatives, requires the best judgment of a community of interests. Once an institution has determined the cost of insuring the risk in a particular facility, for example, the effect of expenditures for safety engineering to achieve lower outlays for risk transfer must be evaluated in terms of policy and public impacts. The fact that the reduction in exposure and in chances of loss is valued highly in the community or communities of interest may outweigh actual lower costs of risk transfer. The financial aspects of the program must also be evaluated in the context of the institutional budget and for its expected impacts on programs. It must be completely clear that the decisions and the steps taken are correct in financial terms.

The relation of cost and cost effectiveness to total budget obviously will be evaluated differently in different environments and will vary with the size of the budget. Nonetheless, policy criteria for the institution must be developed so that public and board officials as well as administrators are aware of the decision process and of its effects both on income and assets. The operation is not conducted in a vacuum, and one cannot rely solely on the financial judgments of the risk manager or the business officer; pertinent factors must be placed in perspective and evaluated by all the involved interests.

COMMUNICATION OF POLICY

It is vital that both the procedures and the rationale for each of the judgments be set forth, and that they be available for examination and consideration by all the various publics of the institution. The results must be communicated to other institutions and to government, and the problems and programs used as educative devices in building national policy and legislative programs for educational operations in the present environment.

Historical or Developmental Evaluations

In order to gain the perspective offered by historical evaluation, one must develop and maintain the risk management documents and analyses from year to year, demonstrating specifically the changing patterns of loss, of exposures, and of their effects on students and staff, as well as expenditures and the loss history itself. As these data are brought together over a period of time, the actual out-of-pocket costs, including losses settled, need to be drawn together and the pattern or trend of the outlays evaluated in relation to the total institutional budget and its policies. Since many decisions involve considerations broader than the institution's immediate concerns, the elements must also be evaluated in the public context. The considerations supporting the officers' and the governing board's positions should be known.

Similarly, the results of the activity of the institution, including its decisions, must be available for both general and specific consideration.

The business officer of each institution periodically should prepare and update such an evaluation for consideration by his administrative peers and the trustees or regents. In his review of the results and in drawing his conclusions with respect to program effectiveness, he should seek the assistance of academic as well as plant personnel. Representative student groups, as well as community or public representatives in the case of urban and public institutions, also may be effectively involved in the process.

Public Education

Another facet of program evaluation is the interpretation of the results of public education programs. In assessing the cost of incidents, not only their number and the losses they cause but also the public reaction must be evaluated. The effectiveness of programs is measured not only by the minimization of losses and claims but by the degree of public understanding and assistance.

Finally, in order to measure the effectiveness of the policy and program, both need to be tested over time as both the environment and the impacts on the institution change. The responsibility for this rests primarily with the business officer, who must, as part of his job, develop the tools and materials and coordinate the relevant staffs.

NATIONAL GROUPS

In the interest of national policy, NACUBO, the American Council on Education, and other organizations broadly representative of higher education must periodically draw together the patterns of risk management currently manifested by the institutions and evaluate their impact both on programs and on finances in order to recommend national standards of risk management behavior for higher education.

From this evaluation also comes a national policy stance with respect to new or developing environmental patterns that may require legislative or other statutory treatment. As has been emphasized, a considerable number of the current risks are new and are such that many institutions cannot assume them. They call for legislative consideration, and higher education must embark on a program of public education and legislative development that can only eventuate if the institutions approach the problem with a unified front and provide the documentary evidence necessary to make that point effectively.

CONCLUSION

In the last analysis, the most effective risk management and insurance program is that which has the least impact on academic program while minimizing the financial costs of managing and offsetting the risks. Loss

prevention and loss limitation are as important as, possibly more important than, securing adequate insurance against risk; except where it becomes essential for program reasons to transfer the risk, first attention should be given to security and safety engineering.

In essence, nonspeculative risk taking is inherent in management, and appropriate attention to this function is vital if the business is to succeed. This generalization is as applicable to higher education as it is to any commercial enterprise, and perhaps more so, for the capacity to transfer responsibility is much more limited, while the reputation of the management and of higher education in general depend directly on them. Innovative thinking and attention to education of the publics concerned are the keystones and there is no substitute for them.

Each institution must develop an approach to risk management suitable to its environment; it must constantly reevaluate that approach, being alert to new developments and flexible enough to adapt to them. It must also make it clear where the responsibility rests and effectively support the decisions that are made to effectuate the program. Its posture is administrative, based on the appraisal of the whole program, including risk; once determined, the posture can be maintained only if the conditions are held constant.

Management, finally, is the art of achieving the possible, and good management calls for sound judgment and the use of well-understood controls. The success of the risk management function thus depends on understanding and maintaining the posture once it is taken.

Glossary

Accidental death and dismemberment insurance. An insurance coverage generally written on a group basis to provide a death benefit (usually large) in case of accident; frequently used as a travel coverage to supplement workmen's compensation or other provisions made for employees. See Chapter VIII.

Acquisition cost. The cost of selling insurance, normally meaning the agents' and/or brokers' commissions. In some cases, the term is used to designate all expenses or costs of putting the business on the company books. See Chapter V.

Actual cash value. Replacement cost new, less depreciation. See also "Appraisal" and "Value."

"Additional" insureds. Names added to the insuring clause, at the request of the insured, stating the interests involved. In liability, particularly, all interests are by this process assembled under a single cover. See Chapter VII.

Adjuster. One who investigates and negotiates or settles claims for insurers, may either be a representative of the company or a third-party group which specializes in loss adjustment procedures See Chapter V and IX.

Admitted company. Any insurance company which has been admitted to or licensed to do business in a state. See Chapter V.

Agent. An independent contractor or sales representative who, by contract, represents a carrier in dealing with its market. The agent has binding authority, but his powers are limited by contract and law. See Chapter IX.

Aircraft liability insurance. An insurance coverage against alleged loss by or damage to third parties on the ground or in the air as the result of aircraft operation; it may be written independently as a specialty coverage or endorsed into the general liability coverage. See Chapter VII.

All-risk insurance. A contract, usually property insurance, that covers losses caused by any and all perils within the line of coverage except those specifically excluded in the contract. See Chapter VI.

Appraisal. An evaluation of an item or items, prepared in accordance with stated standards for specific usage. For insurance purposes appraisals of real property and personalty may be prepared internally or by outside appraisers and should include a detailed statement of valuation procedure. Replacement value, that is, the actual cost of replacement of the item insured, is frequently used for insurance purposes. Appraisals generally will contain historical cost data, adjusted or updated, and actual cash value, market value, or replacement value, sometimes all four, together with statements of methodologies used in compiling them.

Automobile liability insurance. A liability insurance providing coverage for legal risk, available either for individuals or institutions (may be on a fleet basis), resulting from the negligent operation of a vehicle by or on behalf of the insured. The coverages include bodily injury and property damage. See Chapter VII.

Binder. Normally a form or letter committing the insurer to a specific coverage under given terms for a specific time period. A legally valid procedure for insuring any risk temporarily, pending issuance of a policy. See Chapter V.

Blanket insurance A single amount of insurance, covering (1) one or a number of perils, *e.g.*, fire and extended cover, or (2) written to cover a number of similar items. Buildings on several campuses, for example, may be covered under a blanket policy, the terms of which cover all in the same manner. See Chapters V and VI.

Boiler and machinery insurance. A coverage designed to provide for the property insurance policy exclusion of operating boilers and machinery contained within a facility, except for damage to them caused by fire external to themselves Normally covered are all types of operating machinery, boilers, compressors, turbines, and other electrical equipment. The coverage does not normally apply during installation or storage of such equipment, unless so endorsed. The coverage provides for direct loss, including expediting expenses, property damage liability, bodily injury liability, defense and settlement costs. Excluded are damages caused by fire, explosion, or other peril outside the subject property. The boiler and machinery coverage normally provides for regular inspection service. See Chapter VI.

Broadcasters' legal liability insurance. A specialty insurance coverage which may be written independently or by endorsement to the property or liability coverages, providing insurance against legal liability for actions, or their omission, on the basis of rules established by FCC and other regulatory or legislated conditions. See Chapter VI'.

Broker. An independent representative either of insurers or the insured, familiar with the market and having continuing arrangements with a number of carriers. Although he represents the insured legally, he may represent the insurer in a particular market relationship. See Chapter IX.

Builders' risk coverage. A coverage written either independently or by endorsement to property policies, usually providing all-risk insurance relative to the interests involved in construction The coverage usually is all-risk, that is, it covers direct damage to the property (including facilities already in being) from fire, lightning, extended coverage, etc., it may also provide coverage against injuries to third parties incurred in the construction process. Typically, the coverage is purchased by the owner, although it may be made a condition of the contract for the contractor. See Chapter VI.

Burglary. Forcible entry or exit from a premises to remove an object or objects See Chapte VII.

Business interruption insurance. Insurance against loss of anticipated income less unnecessary and noncontinuing expense (loss of anticipated net profits plus necessarily continuing expenses) caused by an interruption of an activity by a peril covered. See Chapter VI.

Catastrophe coverage. A generic term normally used to describe either high limit excess (of base) coverages or high limit specialty covers, near total loss.

Certificate of insurance. A document prepared by company, agent, or broker attesting to the existence of a coverage; such certificate is normally delivered to interested third parties to assure them of the existence of, and the extent of, coverage provided.

Coinsurance clause. A provision contained within the normal property insurance policy by which the insured and insurer agree in advance on the portion of the value (as defined) which will be covered if losses are to be met in full, subject to the policy face. Eighty percent and ninety percent clauses are normal. See Chapter V.

Comprehensive general liability policy A generalized liability coverage written to provide for all legal liability losses except those related to property in the care, custody, and control of the insured, contractual liabilities, certain of the professional liabilities, as, for example, malpractice, and primary coverages of other risks, *e.g.*, automobile, aircraft, etc.

Concurrent insurance. Insurance covering the same interest and perils under the same conditions as the policy with which it is concurrent. Two, or more, policies may be written to cover a single risk, if so, both should provide coverage under exactly the same terms. See Chapter V.

Consequential (or indirect) loss insurance. A policy coverage designed to provide for the financial losses following indirectly from the basic damage, *e.g.*, income loss from use of

facilities. The coverage may include expediting and extra expense coverages as well as loss of income, all by endorsement. See also "Business interruption insurance." See Chapter VI

Contributions clause. A limiting clause which is typically included in standard first-party marine and property coverages. The clause provides that each insurance in force will contribute to any loss in proportion as the value insured by that policy relates to the total value insured. See Chapter V.

Coverage. The amount and type of insurance provided; sometimes used to refer to the perils covered, sometimes used to refer to the face amount of the contract. See Chapter V.

Crime coverages. Crime coverages is a generic term, a kind of umbrella including coverages such as burglary, robbery, theft, the various fidelity covers, fraudulent conversion, embezzlement, and dishonesty, and mysterious disappearance.

Deductible. An amount of loss to be absorbed by the insured before the insurance becomes effective in a given loss situation. Deductibles may be written per loss or as an annual aggregate or in some combination of these two. The effect is to eliminate the relatively small and frequent losses from insurance coverage. See Chapter V

Demolition insurance An endorsement to a property coverage providing indemnity for demolition of damaged property, required by public authority to permit construction of new facility; optional demolition is not included. See Chapter VI.

Deviation. A difference from the standard form or rate established by a rating bureau. See Chapter V.

Direct writers Insurance companies that relate to the market only through employee organizations, having no broker or agent representatives. All employees of the company, in effect, are its agents. Underwriting is done directly and the relationships between the insurer and the carrier are direct. See Chapter IX.

Earthquake insurance. Provides for coverage against the natural hazard of earthquake, incidents of earth movement of sufficient magnitude to be recorded seismographically. Normally, it is written as a separate policy. Prices and deductibles vary widely by location. See Chapter VI.

Employers' liability insurance. An insurance coverage designed to provide for common law financial responsibility related to injury in course of employment, related to workmen's compensation. The coverage provides potential indemnification for job-related accidents or disease, if the employee elects to bring suit under tort law rather than accepting compensation. The coverage is mandatory in some states, optional in others where compensation supersedes it. See Chapter VIII.

Endorsement. An amendment or addition to an insurance contract usually providing additional coverage or changing the terms of the contract. It will supersede any contract provision to which it is applicable. See Chapter V.

Errors and omissions policy. A broad liability coverage providing for legal responsibility incurred as the result of an error in judgment or an act or omission of an act The coverage generally is applied to officers, administrators, and others engaged in the provision of professional administrative services. It may be provided either independently or as an endorsement to another liability policy. See Chapter VII.

Extended coverage endorsement. A standard package peril endorsement providing coverage for the perils of windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke. Vandalism and malicious mischief may be included by endorsement. See Chapter VI.

Federal Occupational Safety and Health Act. A federal law providing a program of standards of safety to be met by employers with respect to their employees which may be administered by the state following program approval by the federal government; differs from workmen's compensation in that failure to observe standards results in penalty to employer; includes possible criminal liability charges against the employer of

employees so injured (in addition to any statutory compensation due). See Chapter II, see also Chapter VII.

Floaters. Usually an all-risk policy coverage or endorsement designed to provide protection against losses to or of items which are in transit, items used off premises, or high-value specialty items. See Chapter VI.

Flood insurance. An insurance coverage providing indemnification for losses or damage the result of flood and mudslide, available either as an endorsement to the standard property coverage or independently. It is restricted generally to areas having access to a federal reinsurance pool operated by the Department of Housing and Urban Development. Location, susceptibility to natural flood conditions, and area history will be significant determinants of availability and price for the coverage See Chapter VI.

Group deferred annuity. A group coverage designed to provide pensions. The plan works by annual purchase of annuities bearing some proportionate relationship to the earnings in each year of service. In a 2 percent program, for example, a life annuity equal to 2 percent of the compensation paid is purchased, the annuity to begin at some future point, for example, age sixty-five. Benefits are vested in the group, not the individual: however, the individual may have personally vested rights in the performance of the group program immediately, or after some period of time, depending on the terms of the contract. See Chapter VIII.

Immunity, sovereign. A right reserved by government to preclude action against itself by virtue of its sovereignty and the necessity for making judgments in the interest of the state which may, in fact, deprive some of property or other rights See Chapter I, see also Chapter VII.

Incurred loss. A loss is incurred when it happens; it is not a paid expense until actually paid. In reviewing experience, one should have incurred losses, (usually represented by reserves) and paid losses to determine position. See Chapters V, VI, and VII.

Inland marine insurance. By definition, adopted by the NAIC in 1953, a type of insurance designed to cover property in transit (imports, exports domestic shipments, instrumentalities of transportation and communication), and broad peril floaters on movable property where the perils of transportation are paramount elements of the hazard

Insurable interest. A demonstrable legal interest of value in the property, person, or event insured. See Chapter V.

Insurance. A social device whereby risks of financial loss are transferred from one to a group, all subject to probabilities of loss from the same peril, through pooling. Thus, the group becomes responsible for losses of its members, each participant exchanging a certain cost, the premium, for the uncertain chances of his own potential losses. See Chapter I.

Insurance policy. A document setting forth the terms and conditions under which the risk taker, the insurer, undertakes to accept the risks. Policies may be written to provide coverage against a single peril or a combination of perils, may be endorsed in various ways to broaden and/or limit coverage, may be prepared as a "package," a combination of coverages, or may be prepared as an independent manuscript contract providing for the total insurance arrangement. See Chapter V.

Insurance survey. A complete study of the risks and hazards and the insurance held by an institution. It includes an analysis of insurance coverages as well as of the risks involved. See Chapter IX.

Layering. Design of insurance coverages so as to provide horizontal layers of coverage from first dollar to some part of total loss, usually written as an amount, *e.g.*, the first $1 million, with a second layer of $2 million over $1 million, the figures indicating the points at which each of the carriers becomes effective relative to a given loss See Chapter V.

Liability-personal injury. Injury to person usually resulting from a negligent or imprudent contact, including professional, an unintentional tort injury to such intangible

items as reputation, violation of copyright, false arrest, etc. Sometimes used to refer to bodily injury as in an automobile liability policy. See Chapter IV; see also Chapter VII.

Liability risks. Exposure of persons or property to legal risk of loss or damage as the result of a negligent act by the covered person or the failure of that party to act prudently; these risks are normally associated with operations of property or program and result from the exposure of third parties who expect normal "due care and diligence" in handling, maintaining, or operating such properties or programs These risks include acts of criminal negligence, contractual violation, and violation of customary and accepted standards of behavior treated as a tort (resulting in civil actions in equity). See Chapter I; see also Chapter VII.

Loading. Technically, the amount added to a rate to offset more than ordinary hazard or expense, usually it is used to refer to the addition to rate to offset expenses of doing business. See Chapter V.

Long-term disability income insurance Usually a group insurance coverage designed to provide income to the individual covered, after a waiting period, during periods of total disability for some period of time, usually five or more years, with an upper age limit, usually age sixty-five. The programs usually provide for replacement of a portion of income (50 to 60 percent), including Social Security, beginning following a waiting period of six months to one year. In many cases, provision is made for maintaining other insured fringe benefits, including pensions, as an additional benefit. See Chapter VIII.

Major medical insurance. An insurance program usually written on a group basis to provide catastrophe coverage or very high financial limits against medical care costs well above those stated in the base plan, over and above that base plan. The coverage is occasionally written with a large deductible and no base plan. See Chapter VIII.

Malpractice liability coverage. An insurance coverage originally written for the physician or other professional in health care against legal responsibility for acts (or lack of them) in patient care. Now, by extension, it is written to cover many patient or professional participant situations in which treatment in the broadest context is involved, as well as the institution's legal liability for negligence in such program operations or their supervision. See Chapter VII.

Mass merchandising. Terminology applied generally to individual coverages written through payroll deduction Currently a number of states permit automobile, homeowners, and selected other individual coverages, *e.g.*, life insurance, to be written on this basis. See Chapter VIII.

Maximum probable loss. A calculated figure, designed to express the maximum loss likely to be incurred. The relationship between relative frequency and potential severity becomes the basis for determining the maximum probable loss and, hence, for rating each risk.

Medical expense insurance-base plan. This insurance, usually written on a group basis, is a first-dollar coverage providing for general hospital expense for covered individuals for some period of time, usually with a surgical schedule, subject to stated limitations. See Chapter VIII

"Money purchase" pension program. A form of pension plan under which contributions, rather than benefits, are established, usually as a function of salary. These are normally calculated to produce an amount of contribution which, if maintained, will provide a pension bearing some relationship to final salary at a future age or after some period of coverage. In some cases contributions are made by employer and employee, jointly, in others, contributions are made by employers. See Chapter VIII.

Mysterious disappearance. Disappearance of or loss of an item from a covered premise where no evidence of burglary or robbery in any form is present. See Chapter IV; see also Chapter VII.

Nuclear facilities insurance. A policy coverage written exclusively by either the Nuclear Energy Property Insurance Association or the Mutual Atomic Energy Reinsurance Pool covering direct damage to property in which nuclear reactors and related equipment or

experimentation with radioactive isotopes is in process. The coverage may be written independently or by endorsement to the standard property cover Excluded in the coverage is nuclear damage, the results of acts of war or war itself. Also excluded are all liability claims. See Chapter VI.

Nuclear facility liability coverage. An insurance coverage provided exclusively for legal liability resulting from negligent use or application, or accident with nuclear materials. The coverage is written exclusively by two government carriers, Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters. See Chapter VII.

Ocean marine hull coverage. A direct loss property coverage, offered to cover damage to ocean-going hulls. This does not include any third-party or liability coverage. See Chapter VI.

"Other" insurance clause. A limiting clause, typically included in first-party coverages, permitting other insurance to be purchased. See Chapter V.

Performance bond. A financial bond to guarantee performance of a contractor as stated in the contract covered. Bonds are written by third parties or bonding companies See Chapter VII.

Perils. These are of two types, the first being natural or physical perils such as fire, explosion, water damage, storm, or lightning, to which property and person are exposed; and, the second, those associated with legal financial responsibility for actions or the consequences of actions (or lack of them) by those with responsibility for taking them. See Chapter II.

Practicum. The period of practice or internship required as part of the in-course training for a particular discipline or profession, may be required for certification or license to practice. Practice teaching, legal clerkship, and medical internship all are examples of the practicum. See Chapter II.

Products liability coverage. A liability policy or endorsement designed to provide for legal financial responsibility incurred as a result of supply of a product for use by a third party. Providers of food, clothing, and drugs, as well as prosthetic devices, etc., assume responsibility for the purity of their goods or for their performance. See Chapter VII.

Professional liability insurance. A policy or endorsement to another liability policy designed to provide for legal financial responsibility to others incurred in professional performance, including planned demonstrations and research projects, professional judgments internal to program or on the basis of service rendered to clientele-patient or experimental class. Tort actions for personal injury resulting from mental or emotional trauma as well as bodily injury may be initiated under this insurance coverage See Chapter VII.

Property risks. Exposure of personally or institutionally owned real or personal property to perils which give rise to possibilities of loss. In the insurance context, these usually relate to the principal perils, *e.g.*, fire, lightning, windstorm, explosion, and so forth. These are nearly always first-party direct loss risks, that is, the risk is damage to one's building or equipment requiring replacement or restoration to permit use. See Chapter I.

Pro rata distribution clause. A limiting clause in property insurance, it provides that all coverages, or the insurance coverage per item insured, depending on the type of policy, will be distributed on a pro rata basis relative to the adjusted total values at risk. See Chapter VI.

"Prudent man" doctrine. In order to defend against third-party actions on the basis of negligence, a "prudent man" test has been developed. In effect, if one performs all of the customary actions required of a prudent man in a given situation, negligence is difficult to establish. See Chapter VII.

Public liability-bodily injury. Covers legal responsibility for unintentional injury to person through incident alleged to be the result of negligence in facilities or program operation on or off the insured's premises, physical injury to person, for example, broken leg, cuts, bruises, etc., resulting from such incident. See Chapter IV, see also Chapter VII.

Public liability-property damage. Covers legal responsibility for injury to property as a result of unintentional accident on third party's premises or as a result of participation in program. Included are damages to vehicles, clothing and other personalty, damaged in course of incident, also included are damages to property in parking lot, checkroom, etc. See Chapter IV; see also Chapter VI.

Pure risk. Uncertainty as to the occurrence or non-occurrence of a given event, the result of which can only be loss (of income or asset values). An event from the occurrence of which there can be no possible gain. See Chapter I.

Reinsurance. The process whereby an originating carrier distributes risks undertaken among other insurers, either by treaty or by choice, sharing the premium and risk. It is an intercompany arrangement, the insured is almost never directly involved. See Chapters V and VI.

Replacement cost. The actual cost which would likely be incurred in replacing a facility destroyed. In construction, for example, the actual price per square foot required to reconstruct or construct, *de novo*, space equivalent to that destroyed. See also "Appraisal" and "Value."

Riot and civil commotion. Acts of random violence, usually incited, against an established program, person or condition; normally involves undirected and/or uncontrolled mob action. See Chapter VII.

Risk. Uncertainty as to the occurrence or non-occurrence of a given event See Chapter I.

Risk management Selection of a course of action from among a group of alternatives, the making of a decision with respect to the means of dealing with a risk, the resultant of which action is control or minimization of possible loss. See Chapter I.

Robbery. Unlawful taking of something from someone by force or by threat of violence. See Chapter VII.

Safety engineering. The process whereby loss prevention activities are planned and undertaken. All such activities are designed to produce a safe and secure environment, reducing chances of loss. Included are protecting of equipment, *e.g.*, the adoption of the Underwriters Laboratories' Seal of Approval for materials before use in construction; the development of training and inspection procedures; requiring underwriters' or safety engineers' input in building planning; and full program review procedures involving both disciplinarians, legal counsel, and insurance personnel. See Chapter V.

Self-insurance. The process whereby an insured elects to underwrite his own losses wholly, or to some extent. It involves the judgment as to loss potential, the establishment of adequate cash reserves to deal with losses, and development of an organization for handling claims. See Chapter V.

Social Security program. The social insurance and public assistance programs, provided by statute for employees, including Old Age, Survivors, Permanent Disability and Unemployment Insurance up to retirement, and Medicare A and B post-retirement.

Speculative or economic risk The same as pure risk except that the resultant may be either gain or loss, depending on circumstances and judgment Such risks give rise to speculative (economic) activity. See Chapter I.

Sprinkler leakage coverage. An insurance policy, or endorsement, purchased to cover damage caused by sprinkler or deluge systems installed as safety engineering matters to minimize loss Leakage damage, including water damage incident to the hazard insured or from other causes inherent in the system, all are covered. It may be attached to the fire contract by endorsement or written separately. See Chapter VI.

Standard fire policy. Standard form property insurance contract adopted by the State of New York and used generally in all but four states since 1943. The contract is not an insurance policy, *per se*, but is a form setting forth a simple insuring agreement, common limitations and providing for additions and stipulations, specific coverage and/or modifications are handled by endorsement. See Chapter VI.

Statutory immunity. Grant of immunity by statute to certain classes of enterprise; for example, scientific, charitable, eleemosynary, and educational institutions in the past all

have been granted immunity from third-party action by statute both nationally and locally. Limitations and applications have been adopted both by statute and judicial interpretation. See Chapter I; see also Chapter VII.

Surety bond. A financial bond underwritten by a third party or bonding company to guarantee the integrity to the employer of one occupying a specific position of trust, *e.g.*, controller, bursar, against financial losses as a result of malfeasance or misfeasance of office. Indemnification is limited by the amount of the bond. See Chapter VII.

Tax deferred annuity. An annuity written under a program which permits an employee of a nonprofit educational institution to agree to institutional purchase of a fully vested deferred annuity from gross income before taxes, by income reduction for tax purposes, subject to certain income and other limitations. TIAA-CREF and certain other fully vested programs permit treatment of individual contributions to pension programs as if they were tax deferred annuities. See Chapter VIII.

Theft. The act of stealing; in insurance terminology, a generalized cover against loss by robbery or burglary. See Chapter VII.

Umbrella coverage. A type of excess all-risk liability coverage, normally written to apply to losses over the basic coverage, for large or catastrophe loss situations. See Chapter VIII.

Underwriter. A person trained technically to select and rate risks for insurance purposes. The word sometimes is used to apply to an insurance carrier. See Chapter V.

Value. As used in insurance, the term is widely misunderstood. Policies may be written for a "stated" value (pre-agreed), the "actual cash value" at the time of the loss, or "replacement value." The differences are obvious when one considers an institutional building which has a market value of considerably less than either book or replacement, frequently because of limited usage possibilities. Insured values depend on appraisals, the methods and findings of which should be agreed to in advance. See Chapter V.

Vandalism. The act of maliciously destroying or damaging property. See Chapter VII.

Workmen's compensation insurance. An insurance coverage written to provide statutory redress to employees of an employer required to have or electing the coverage for accidents or disease in course of employment. Provides for payment of statutory amounts without a requirement for a finding of fault. See Chapter VII.