THE REGULATION OF TAXICABS
IN CHICAGO*

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I. Introduction

Students of economics and urban transportation frequently cite the limitation on the number of taxicabs in most American cities as a clear case of unwise government policy. They argue that a limitation on the number of cabs can only operate to raise the price and decrease the supply of taxicab service as compared to that which would otherwise be provided.¹ The argument is supported by the example of Washington, D.C., where there is no limitation on the number of cabs and a low-cost service.²

The academic view is often not conclusive to the non-economist. Spokesmen for the taxi industry contend that it has proven itself unstable and irresponsible when governed by a regime of competition. The experience in Washington D.C. is difficult to deal with, but the spokesmen for the industry are not above trying. As the General Counsel of the American Taxi Association once told Congress when testifying on behalf of restricted entry in the District of Columbia, taxi operators find conditions there "little short of a disgrace." "It is the kind of condition," he testified, "that gives the entire industry a bad eye."³ Congressmen—themselves consumers of the service—were skeptical, even sarcastic.

The authors of this article share the academic view. But difficult questions remain. Why has a policy adverse to the interest of consumers been so frequent and so persistent in American cities? If there is, indeed, an "invisible

* This study was supported by a grant for a Regulated Industry Workshop from The Brookings Institution to the University of Chicago Law School.
¹ For example, J. R. Meyer, J. F. Kain and W. Wohl, The Urban Transportation Problem (1965).
² Washington does impose a fixed rate of fare by means of a zone system which results in peak load scarcity and probably some geographic unevenness of supply.
hand,” why has it not guided the cities’ policymakers in the direction of optimizing the benefits for all? What are the effects of the policy actually pursued? What political groups have formed the regulation? The available literature does not answer these questions. We here attempt to describe the present state and explain the origins and development of Chicago taxi regulation. We have concentrated on the public and formal aspects of the problem, attempting to identify those features of the regulatory process which appear to be systematic and persistent.

Our study shows that the regulation of taxicabs in Chicago has had a substantial impact on the service provided. More strikingly, our study shows that the formal policy of the ordinance is not and never has been fully endorsed. The illegal services thus permitted—although difficult to study because of their irregular status—offer a glimpse of the services that would be available under a different system of regulation. More importantly, our study suggests that a systematic policy of low level enforcement has been essential to the preservation of the monopoly policy of the ordinance. Tacit acceptance of illegal operations by the city has sidetracked and contained political forces which otherwise would have been directed against the ordinance itself. Whenever effective enforcement of the ordinance would have required a confrontation making these forces newsworthy and hence visible to the political community, the city has repeatedly and ingeniously devised policies designed to avoid the confrontation but to preserve the ordinance. These policies have persistently lead to the involvement of the courts as the final reviewers of the regulation and it is with their approval that the Chicago taxi monopoly has not only survived but achieved seeming permanence.

II. The Structure of the Regulation and the Behavior of the Industry

Of the 4,600 licenses authorized by the ordinance, 3,666 or 80 per cent are held by the Checker (1,500 licenses) and Yellow (2,166 licenses) taxi companies, both controlled until his death in July of 1970, by Morris Markin of Kalamazoo, Michigan, and his family through a complex set of corporate


relationships.⁶ (See Charts I-IV.) Holders of taxi licenses under the ordinance enjoy protection from the issuance of additional licenses. The ordinance pro-

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CHART I

1946

MARKIN

SOKOLL, et al

99.5% LEASES, LICENSES, (at $480/Yr.)

CHECKER TAXI

GAS AND OIL

CHECKER MOTORS

CAB SALES

PARMALEE

GAS AND OIL

35%

GENERAL TRANSPORTATION INSURANCE

15%

SERVICE AND PARTS

51%

51%

TRANSPORTATION MAINTENANCE

INSURANCE

SERVICE AND PARTS

SERVICE AND PARTS

YELLOW CAB

GAS AND OIL

UTILITIES MOTOR FUEL

BENZOLINE MOTOR FUEL

GAS AND OIL

CHICAGO YELLOW

45%

49%

10%

29.5%

7.8%

1.7%

100%

100%

100%

Source: Derived from the Complaint, United States v. Yellow Cab Co., No. 46 C 1339 (N.D. Ill. 1946), rev'd 332 U.S. 218 (1947).

vides that no additional licenses can be issued unless the ratio of operating expenses (exclusive of Federal income taxes) to gross revenues of all licensees

⁶In addition “there is present (1960) pending in the Circuit Court of Cook County a lawsuit filed by Michael M. Sokell, President of Checker Taxi Company, against Public . . . [he] seeks to obtain a declaratory judgment that he is sole owner of Public (which controlled 180+ independent licenses).” Letter to Vehicle Commissioner Flynn from the Corporation Counsel, Feb. 4, 1960. Corporation Counsel's files.
falls below 84½ per cent.\textsuperscript{7} Since in recent years this ratio has been above 94 per cent for Checker and Yellow (according to their financial statements as submitted to the Public Vehicle Commissioner), no new licenses can be issued under the ordinance.\textsuperscript{8} In any case the ordinance provides that new licenses, if issued, shall be issued to holders of present licenses in proportion to the number they now hold, guaranteeing to Checker and Yellow in perpetuity their 80 per cent share of all outstanding licenses.\textsuperscript{9} The ordinance also pro-

\textsuperscript{7} Chicago Mun. Code, § 28-22.1.  
\textsuperscript{8} See Tables 1 and 2, infra.  
\textsuperscript{9} Chicago Mun. Code, § 28-22.1.
provides for fare increases whenever the expense to revenue ratio is above 86 per cent,\(^\text{10}\) so licensees are apparently entitled, under present operating conditions, to a fare increase any time they apply for it.

The significance of the 86 per cent ratio can be better understood by means of the following figures. As will be discussed later, $20,000 a year is a conservative estimate for the gross revenue of a taxicab operating full time. Eighty-six per cent of $20,000 is $17,200, providing a profit of $2,800 for each licensee. The capital investment in each taxicab and its supporting facilities should not exceed $6,000. So the ordinance would appear to protect all licensees against entry and entitle them to a fare increase unless they have a return on capital of more than 47 per cent.

\(^{10}\) Id. § 28-30 (b).
CHART IV

MERGER, 1969

MARKIN AND FAMILY

80%

1.1% (1%)

44% 47.5%

CHECKER TAXI

100%

CHECKER MOTORS

100%

CITY MUTUAL

100%

CAB SERVICE AND PARTS

100%

YELLOW CAB

CALUMET MUTUAL INSURANCE

Source: Derived from the Complaint and Answer, Stryker v. Chicago Yellow Cab Co., 38 C 4001 (S.D. N.Y. 1968).

In addition to the entry and fare increase provisions, the ordinance regulating taxicab operations contains a number of other provisions which lead to uniformity in taxicab service. The fares established by the ordinance are not maximum fares, they are mandatory. Each taxicab must be equipped with a taximeter and the fare charged must be the fare indicated on the meter. There is no variation in fares for the time of day or year. It is unlawful for a cab to refuse to take a passenger anywhere within the city.11 A cab, once retained, may not pick up any additional passengers.12 No cab may carry more than six passengers.13 The only non-uniform service authorized by the ordinance is livery service where the transportation arrangements are made in advance at a negotiated price.14 Liveries are prohibited from picking up

11 Id. at 28-28.
12 Id. at 28-29.
13 Id.
14 Id. at §§ 28-19.1, 28-19.2.
passengers on the street.\textsuperscript{15} No new livery licenses have been issued since 1952 and the number of outstanding livery licenses is now 327.\textsuperscript{16}

There are substantial departures in practice from the uniformity of service and price imposed by the ordinance. The most important departure is the persistent refusal of many drivers to carry passengers into the poor black areas of the city. These refusals are documented by the stream of user complaints received by the Public Vehicle Commissioner which most frequently involve refusals to haul into these areas.\textsuperscript{17} Presumably, the number of actual refusals to haul far exceeds the number of complaints. The explanation offered for these refusals to haul is the danger for drivers in these neighborhoods and the small size of the tips generally received there.\textsuperscript{18} Drivers, both black and white, find that more money can be made elsewhere. The uniformity of fares throughout the city combined with driver compensation computed as a fixed

\textsuperscript{15} Id. at § 28-19.2.

\textsuperscript{16} The number of livery licenses has declined from a one-time high of 3,500. In 1946 there were 1,300; in 1952, 510; in 1963, 333; from 1964 to the present 327. In 1952 the City Council barred the issuance of new licenses and the transfer of existing licenses. See discussion pp. 333-34 \textit{infra}. In light of these provisions it is surprising that the number of licenses has remained stable since 1964. Some drivers report that a de facto system of transfer has developed in which the license is formally left in the name of the transferor. If the Public Vehicle Commissioner does not require proof that the named licensee is still living, this practice could account for the stable number of livery licenses since 1964.

\textsuperscript{17} Chicago Sun Times, Oct. 31, 1967 at 4: “With the labor shortage, owners and drivers say some areas of the city are short of cabs, particularly late at night. They mentioned the south side, north of North Avenue and outlying areas (e.g., the west side).” The records of the Vehicle Commissioner show that one fourth of the chauffeur license suspensions in the period Jan. 1, 1969 to June 30, 1969 were for refusals to haul:

\begin{center}
\begin{tabular}{lrr}
 Refusals to haul & 445 \\
 Fares overcharges & 405 \\
 Front-seat passenger & 389 \\
 O'Hare Field & 244 \\
 Soliciting passengers & 178 \\
 \textbf{Total} & \textbf{1661} \\
\end{tabular}
\end{center}

However, if only the suspensions imposed as the result of complaints by taxi customers, as opposed to complaints by police, taxi companies, other cab drivers and Continental Airport Transfer Service employees are counted, refusals to haul are even more important:

\begin{center}
\begin{tabular}{lrr}
 Refusal to haul & 445 \\
 Fare overcharge & 405 \\
 O' Hare Field & 122 (61 Refusals, 61 Fares) \\
 \textbf{Total} & \textbf{972} \\
\end{tabular}
\end{center}

The fare and refusal to haul problem at O'Hare airport has its own special background, discussed pp. 340-41 \textit{infra}. Of total city user complaints, refusals to haul constitute more than half of those found justified by the Vehicle Commissioner.

\textsuperscript{18} Project interview with Checker General Manager, Robert Collings.
percentage of fares induces drivers to work the busiest and safest parts of the city. The sanctions imposed for a refusal to haul are usually light: a warning for the first offense, a several-day suspension for a subsequent offense.19

The disparity in licensed taxicab service actually available in different parts of the city is offset to some extent by the city’s apparent toleration of substantial illegal cab operations on the near west side of the city in some of the city’s poorest black neighborhoods. These unlicensed cabs are reported to number about 300.20 They operate out of other businesses with telephones such as record stores or groceries. They advertise by means of hand-printed business cards distributed throughout the neighborhood. Many are radio dispatched, apparently by means of short range radio operating on Citizen Band frequencies. They specialize in short hauls within the neighborhood. The vehicle division of the Police Department enforces the ordinance against these illegal operators. The enforcement technique used is for specialized policemen to patrol the neighborhood looking for an illegal cab picking up or letting off a passenger. Since the illegal operators use conventional vehicles with concealed radio equipment, it is difficult to distinguish them from regular passenger vehicles. Passengers, many of them aware of the rules of the game and desirous of preserving the service, will often deny that they paid for the transportation. An easier system of enforcement would be to hire undercover agents who would go into the neighborhoods and ask for a cab at local bars and other places likely to know of the illegal companies. The undercover agent could then call for such a cab, and direct him to a location where another officer was waiting to assist with the arrest. The fact that police do not use this simple and obvious method of enforcement suggests that they are willing to tolerate the operations of these cabs. Tacit police tolerance was also suggested by interviews with customers, who reported that it was their understanding that it was “all right” for the illegal cabs to operate outside of, but not in, the loop area.21 Tolerance of these operations makes service available to neighborhoods that would not be served by the licensed cabs. Keeping them outside the loop and other high demand areas protects the economic interests of the licensed taxis and drivers.

19 The office of the Public Vehicle Commissioner regards hearings on complaints as educational rather than punitive, so license suspension is a last resort. In addition, a complainant rarely appears at a driver’s hearing, so it is the driver’s word against the written word of the complainant. This combination of circumstances means that those drivers actually suspended are a small segment of all offending drivers. Project interview with Public Vehicle Commission Chief Inspector, Tom McCall.


21 For an indication of police shakedowns, that is, extra-legal licensing, of these illegal operations, see: Chicago Tribune, May 3, 1963, at 1; Chicago Sun Times, Oct. 3, 1963, at 1.
The second deviation from the uniformity of service dictated by the ordinance is a small jitney operation on the south side of the city along King Drive (formerly South Parkway) from about 28th to 63rd Streets. The cabs cruise up and down the street picking up passengers until they are full, thus violating the group riding ban of the ordinance. They charge a fare of $.25 for any distance on King Drive (the Chicago Transit Authority fare is $.45) and $.25 more for a "turn" off King Drive to the passenger's destination if it is in the area. This violates the fare and taximeter requirements of the ordinance. This jitney operation has been conducted for more than 40 years, beginning at a time when the operation was legal. After World War II many of the jinetys were unlicensed cabs but complaints of excessive congestion and a high accident rate led to the exclusion of all but licensed cabs. The existence of the operation is well known to city officials, and indeed the Public Vehicle Commissioner has informally required a special blue and gray color scheme for jitney vehicles.

In examining the operations of the 4,600 licensed taxicabs operating within the constraints of the ordinance it is useful to distinguish between the 934 cabs operated by independent owners and the 3,666 cabs operated by Checker and Yellow. The operating practices of the owners of these two groups of licenses are substantially different.

The Checker and Yellow operations have the following characteristics. Checker and Yellow drivers are organized into a union and operate under a collective bargaining contract. Under the contract their compensation is a percentage of the gross fares. The percentage varies between 45 and 50 per cent depending on driver seniority. In 1965 the average commission was 46 per cent and in 1968 it was 48.2 per cent. In addition, Checker and Yellow drivers are covered by a retirement program and an extensive medical care program. Fringe benefits add about 5 per cent to the driver's commission. Checker states that 20 per cent of its cabs are out of service at any one time for maintenance and repair. Yellow provides a more detailed breakdown, claiming that at any one time 10 per cent of the cabs are in preventive maintenance, 5 per cent are under repair and 3 per cent are being salvaged for

22 Data submitted by Yellow and Checker to Chicago City Council, Local Transportation Committee (of City Council) during fare increase hearings.

23 Fringe benefits for Yellow and Checker employees are workman's compensation, unemployment insurance, group hospitalization insurance, a free diagnostic clinic and pensions.

24 1965 (7/1/64 to 6/30/65) 4.8%; 1969 (10/1/68 to 9/30/68) 5.7%. These figures were computed from the Checker and Yellow statement, supra note 22. The total fringe benefit costs were allocated between drivers and non-drivers in the same proportion as the ratio between total commissions to drivers and total wages to non-drivers.

25 Project interview with Checker General Manager, Robert Collings.
their good parts.\textsuperscript{29} Of the cabs in service, Yellow drivers estimate that two-thirds are operated on a two shift basis and one-third on the day shift only.\textsuperscript{27} Both Yellow and Checker also explain that some cabs, in addition to those being serviced, are not in use due to a persistent shortage of drivers.\textsuperscript{28} Yellow and Checker drivers are encouraged to concentrate on the loop, O'Hare Airport, and the lakeshore area south and north of the loop where three of the four neighborhood cabstands operated by Yellow are located.\textsuperscript{29} Most Yellow and more than half of the Checker taxis have no radios. Checker reports that it is reducing the number of radio dispatched cabs in its fleet. Checker, wholly owned by the Markin interests, has operated its cabs more intensively than Yellow,\textsuperscript{30} a corporation in which there were substantial minority interests prior to its merger into Checker Motors in 1969. Checker and Yellow operate Checker vehicles, especially suited for taxi operation because of their large rear seating area, which are manufactured by Checker Motors, a related corporation.

Drivers of the 934 independent cabs are not unionized. Although arrangements between drivers and owners differ, many drivers rent the cabs for about $15 for the day shift and $13 for the night shift, paying for gas and oil.\textsuperscript{31} All independent cabs are operated on a fulltime basis. Independent licenses are reputed to sell for more than $15,000.\textsuperscript{32} The bulk of the indepen-

\textsuperscript{29} Project interview with Robert Samuels, President of Yellow Cab Company.

\textsuperscript{27} Project interview with Yellow Cab drivers.

\textsuperscript{28} Project interview with Robert Collings, Checker Cab General Manager, and Robert Samuels, Yellow Cab Company President.

\textsuperscript{29} The recommended areas for drivers are as follows:
Six a.m. to 9:30 a.m.: Hotels; near-North apartments; Sheridan Road and Lake Shore to the Loop, Hyde Park; railroad stations. Ten to 6:00 p.m.: Hotels; O'Hare; Michigan Avenue; Loop. Eleven a.m. to 6:00 p.m.: Convention sites, etc.; Navy Pier, Merchandise and Furniture Marts. Five p.m. to 10:00 p.m.: O'Hare “very heavy.” Six p.m. on: Hotels; near-North; nightspots; theatres. Eleven p.m.: Show break in Loop. After midnight: Hotels, night clubs; “don't cruise.” Drivers are also generally instructed to check with neighborhood cab stands (generally around these same areas) when business is slow. “More people see your cab and want a cab in one block in the Loop than will see it for one mile on 63rd or Jackson or Lawrence, etc.” Checker Memo given to new drivers.

\textsuperscript{30} See Table 3.

\textsuperscript{31} Arrangements vary among the various owners and drivers. Minimum rental is usually $12-$13/shift, or $25 per day up to $15-$16/shift, or $28 per day. Variables apparently include the condition of the cab, the time of day during which the shift comes and possibly the general area of operation. Project interviews with independent cab drivers and owners.

\textsuperscript{32} Issen v. Ross, No. 67 Ch. 5506 (Cir. Ct., of Cook Co., 1967), was a suit to compel specific performance of a contract to sell two taxi licenses for $30,000. The contract was made on June 19, 1967. Plaintiff alleged that defendant intended to sell the licenses for a sum greater than $30,000; defendant denied any intention to sell to another. The owner of Dewberry Cab Co. says he was offered more than $15,000 in 1963 for one of his
dent cabs are either affiliated with (by means of an operating agreement providing for operation under a common name and with common dispatching facilities) or owned by three major groups: American United, Flash, and Abernathy.\textsuperscript{33} Almost all are radio dispatched. All concentrate their operations outside the loop. American United and Flash operate on the north and northwest side, Abernathy on the south side, and Highland on the southwest side. American United and Flash are successors to the veterans' groups that entered the industry after World War II and pioneered radio dispatched cabs. Abernathy has entered more recently, and specializes in serving the higher income black neighborhoods on the south side. Independents operate all types of vehicles including some Checkers but mostly standard four-door sedans.

The most striking feature of the difference between the independent owners and Checker and Yellow is the profitability of the independent licenses and the unprofitability of the Checker and Yellow licenses. Independent owners can gross $150 (\$25 \times 6) per week for the rent of their cab and license. This comes to $7,500 a year (50 weeks \times \$150). If a cab can be purchased, maintained and insured for \$5,000 a year, the profit would be \$2,500 a year. Profits in this range are also suggested by the capital value of the license of \$15,000 which would be consistent with annual earnings of \$2,500 capitalized at a 16.6 per cent rate. Since the value of the licenses depends solely on the expectation that additional licenses will not be issued and that the ordinance will be enforced, the historical experience justifies a fairly high capitalization rate. Unfortunately, it is difficult to determine the exact level of independent earnings because the financial statements submitted by the independents to the Public Vehicle Commissioner under the ordinance are highly variable. They show, for instance, gross incomes per license ranging from \$24,000 to \$4,000. Profit per cab ranges from \$5,000 to nothing.\textsuperscript{34} The revenues and expenses of each report appear to be computed on a different basis. Since the Public Vehicle Commissioner imposes no accounting requirements and makes no use

\begin{footnotesize}
\textsuperscript{33} The major independent operators and the number of their taxis are: Flash (includes Public), 235; American United, 170; Abernathy, 100+. Chicago City Council, Local Transportation Committee, Records.

\textsuperscript{34} See Table 3. Some licensees appear to report only their net income from license rental, but at the same time they report as an expense "agent's commission"—a figure representing their drivers' earnings—which is not an expense when the owner leases his cab. Other licensees seem to be reporting non-taxi income and non-taxi expenses. Since no use is made of this data, the Public Vehicle Commissioner has no incentive to standardize reporting practices or take other steps to insure that reliable information is received.
\end{footnotesize}
of the forms once submitted, such inconsistency is perhaps to be expected.\textsuperscript{35} It is difficult to believe that the gross revenues and profits to be derived from taxi operations are so variable from cab to cab. The level of gross revenues and profits reported is also inconsistent with the rental fees and license values which are freely and uniformly reported.

The financial figures reported by Yellow and Checker are probably more meaningful. Both are large organizations which must make use of professional accounting and tax assistance. Yellow as a publicly held corporation (until the middle of 1969) issued audited financial statements with the same figures as those filed with the Public Vehicle Commissioner. Checker reports a gross revenue of $11,487 per license and a profit of $418. Yellow reports gross revenue of $8,707 and a profit of $192.\textsuperscript{36}

Yellow and Checker advertising has long stated that a driver earns $25 per day. More recently they have advertised that it is possible for a driver to earn $50. Interviews with drivers revealed that the driver's share of the meter fare averages $25 for a ten hour day. Assuming a 50 per cent commission rate, the meter gross revenue per cab would be $50 a shift. If tips averaged 20 per cent, or $10 a shift, a driver's take-home pay would be $35 a day or $165 a 5-day week or $8,250 a 50-week year. A driver who pushed harder could reach the "$50 possible" advertised by Checker and Yellow.

If the $50 per shift is a reasonably accurate estimate of the average meter revenue per cab per shift, and a cab is operated 6 days a week for 50 weeks a year (a conservative estimate) then the revenue produced by a single taxi operated on a single shift for a year is $15,000. If one simply doubles this amount for a second shift, then a single cab should be able to earn $30,000 a year. There is a difficulty however, about simply doubling the amount. It is difficult to fit two full ten hour shifts into a day if the midnight to 6:00 A.M. period is not used. But the addition of second shift operations might easily bring the possible gross revenue per cab per year into the $20,000 to $25,000 range. The reported gross revenues of Checker and Yellow are, of course, less than that by a magnitude of 50 per cent.

Yellow and Checker offer two explanations for their low level of operations in relation to potential. One is that 18–20 per cent of their cabs are out of service for maintenance and repairs at all times.\textsuperscript{37} The second is an inability to attract a sufficient number of drivers.\textsuperscript{38} Both Checker and Yellow regularly

\textsuperscript{35} The City Council could use the data submitted to the Public Vehicle Commissioner in its fare increase hearings, but in actual practice it uses information supplied directly to it by a majority of licensees (that is, Checker and Yellow). The result is that the Public Vehicle Commissioner's office only checks to make sure each licensee has submitted a report in apparent conformity with Chicago Mun. Code, § 28-30.1 before it stores them.

\textsuperscript{36} See Table 3.

\textsuperscript{37} See p. 293 supra.

\textsuperscript{38} Chicago Sun Times, Oct. 13, 1967, quotes J. Feldman of Checker as saying: "We
advertise for drivers. More drivers could be obtained if more compensation was offered. The uniform commission rate makes it particularly difficult to attract drivers to work at off hours when business is slow. But presumably Checker and Yellow choose not to offer additional compensation because they feel that the income generated by the additional cabs would be less than the additional cost.

The percentage of licensed cabs actually operated by Checker and Yellow is difficult to discover. One guide is the 1963 ordinance which, at Checker and Yellow’s behest, was amended to authorize a license holder whose expenses exceed 90.5 per cent of gross fares to “lay up” up to 25 per cent of its licensed cabs. If Checker and Yellow make full use of this privilege, for which they are qualified, and if an additional 20 per cent of the cabs are out for maintenance and repair at any one time, then Checker and Yellow operate 55 per cent of their licensed cabs. Another guide is the number of cabs which Checker and Yellow have repeatedly advised the city is “optimum.” This number is 3,000. If Checker and Yellow proceeded to insure that an “optimum” number of cabs are in fact operated in the city, and the 934 licensed independent cabs operate full time, then Checker and Yellow operate 2,066 of their 3,666 licenses or 56.4 per cent. These figures, however, can only be suggestive. At eleven locations throughout the city on a June weekday we found about 875 idle Yellow cabs with medallions. Since we could not distinguish those cars which were idle and those awaiting repair we counted all of them. If 875 cabs are idle, then Yellow operates 1,291 or 59.5 per cent of its cabs.

Any effort to determine the number of cabs operated full time must confront a definitional ambiguity. What does it mean to operate a taxicab full time? Is a taxicab operated full time if it is put on the street an average of twice a month to handle heavy traffic during conventions? Is it full time operation if a taxicab is operated by a part time driver four hours a day during the evening rush hour? The ordinance itself is ambiguous, providing only that “every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for service.”

have cars sitting idle because we cannot get enough men [to drive them].” Checker and Yellow advertise regularly in Chicago’s daily papers and Chicago college newspapers. Signs on Checker and Yellow garages also beckon those who want to earn a “possible $50 per day.”

39 The driver commission rates under the 1968 contract are: 0-2 years, 42½%; 2-4 years, 47½%; 4-10 years, 48%; 10-11 years, 49%, 11 years, 50%. There is no differential for working the night shift. Chicago Sun Times, Sept. 1, 1968, at 1.


41 Chicago Sun Times, Jan. 10, 1959, at 5.

The approach to measuring the level of Checker and Yellow operations that seems to us most revealing is to use Yellow and Checker's gross revenue figures as a guide to their level of operations. In order to translate these gross revenue figures into a "full time" cab equivalent it is necessary to develop a figure for the annual gross revenue of a "full time" cab in the city. There are two firm outer limits for the range of such a figure. The lower limit is the $15,000 annual revenue for a single shift computed above. The upper limit is $30,000 which should be the annual gross revenue for a cab operated on two full shifts. The only source for a more precise figure for the annual gross revenue of a "full time" cab is the operating data of the independent companies. The only data available for Checker and Yellow are aggregate data and it is clear that they operate less than all their licensed cabs. The independents, on the other hand, appear to operate all their cabs full time. Most independents report gross annual revenues of less than $15,000. One company (the Highland Cab Co.) reports average annual earnings of $24,247 per license. It is difficult to believe that Highland would over-report its income. It is also difficult to believe that other independents accept substantially lower gross revenues, although there is some indication that Highland operates its cabs more intensively than other companies. We have computed estimates of the average independent gross revenue for each license. The computations are detailed in Appendix I. The estimates are: $16,900 (from International Taxi Ass'n. trip and passenger data, probably low); $19,200 (from daily rental assuming 50-50 split with driver, probably low); $20,500 (from ITA total mileage data) and $23,990 (from total mileage estimates based on interviews). The figure of $20,000 is a conservative estimate of the gross revenue per cab obtained by independent operators.

If the $20,000 figure is divided into Yellow's 1968 revenue of $18,858,416 the answer is 943 full time cabs out of 2,166 licenses (42.5 per cent). Checker's revenue of $17,231,057 divided by $20,000 yields 862 out of 1,500 licenses (57.4 per cent). This does not mean that Checker and Yellow operate only 1805 cabs. Unlike the independents, they have spare licenses and they can be expected to take advantage of whatever scheduling and operational flexibility those licenses provide. Checker and Yellow seem to feel that it is desirable to have 20 per cent of their cabs out of service at any one time. That would add 451 cabs to the number of licenses operated, a total of 2,256. If the 934 independent licenses are added, the total is 3,190 which would represent the number of full time cabs actually operated in the city. Perhaps not sur-

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43 See p. 296 supra.
44 See Table 3, p. 314 infra.
45 Highland reported that some of its cabs travelled 200,000 miles over a period of 1.5 to 2 years, while other independents reported their cabs covered the same number of miles in 2.5 years.
prisingly, this number is close to the number of cabs that Checker and Yellow have repeatedly insisted is optimum for the city.

This analysis of the number of unoperated licenses owned by Checker and Yellow indicates that the high license value accruing to independent licenses results not only from the ordinance which limits the number of licenses to 4,600 but also from the policy of Yellow and Checker to operate less than all their cabs in order to maximize the profitability of their operations. This is, of course, the expected strategy of a dominant firm free to set its own price. Since Checker and Yellow appear to be entitled to fare increases under the ordinance as written and have almost never been resisted in their applications for a fare increase, they would appear to be in this position.

Yellow and Checker have always been careful to present themselves not as a dominant firm but as a public service corporation. The reported profits of both companies have been marginal year after year (See Tables 1 & 2).

**TABLE 1**

**Revenues and Expenses**

<table>
<thead>
<tr>
<th></th>
<th>Yellow</th>
<th>Checker</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1969</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Revenue</td>
<td>$18,858,416</td>
<td>$17,231,057</td>
<td>$36,089,473.00</td>
</tr>
<tr>
<td>General Expenditures</td>
<td>18,444,536</td>
<td>16,603,178</td>
<td>35,047,714.00</td>
</tr>
<tr>
<td>Ratio</td>
<td>97.7%</td>
<td>96.3%</td>
<td>97.1%</td>
</tr>
<tr>
<td><strong>1968</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Revenue</td>
<td>$20,187,885</td>
<td>$18,302,317</td>
<td>$38,489,202.00</td>
</tr>
<tr>
<td>General Expenditures</td>
<td>19,197,222</td>
<td>17,541,540</td>
<td>36,738,762.00</td>
</tr>
<tr>
<td>Ratio</td>
<td>95.1%</td>
<td>95.8%</td>
<td>95.4%</td>
</tr>
<tr>
<td><strong>1964</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Revenue</td>
<td>$19,312,568</td>
<td>$18,256,500</td>
<td>$37,569,068.00</td>
</tr>
<tr>
<td>General Expenditures</td>
<td>19,034,007</td>
<td>16,989,000</td>
<td>36,023,007.00</td>
</tr>
<tr>
<td>Ratio</td>
<td>98.5%</td>
<td>93.0%</td>
<td>95.8%</td>
</tr>
</tbody>
</table>

*Sources: Financial data submitted to Public Vehicle Comm'n by Yellow and Checker. Yellow's Annual Reports.

* Only available figures for this time period.

Whether this is due to inefficiency or financial reporting which disguises the actual situation we do not know. Checker and Yellow purchase many of their
TABLE 2
REVENUES AND EXPENSES
Yellow Cab Company

<table>
<thead>
<tr>
<th>Year</th>
<th>Revenues $Million</th>
<th>Operating Expenses $Million</th>
<th>Total Expenses $Million</th>
<th>Ratio of operating expenses to Revenues (percentage)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>19.8</td>
<td>18.3</td>
<td>(18.8)</td>
<td>92</td>
</tr>
<tr>
<td>1966</td>
<td>20.2</td>
<td>18.7</td>
<td>(19.2)</td>
<td>92</td>
</tr>
<tr>
<td>1965</td>
<td>18.7</td>
<td>18.5</td>
<td>(19.0)</td>
<td>99</td>
</tr>
<tr>
<td>1964</td>
<td>19.3</td>
<td>18.6</td>
<td>(19.0)</td>
<td>96</td>
</tr>
<tr>
<td>1963</td>
<td>17.8</td>
<td>17.6</td>
<td>(17.9)</td>
<td>99</td>
</tr>
<tr>
<td>1962</td>
<td>15.7</td>
<td>16.0</td>
<td>(16.3)</td>
<td>100+</td>
</tr>
<tr>
<td>1961</td>
<td>15.8</td>
<td>15.6</td>
<td>(16.0)</td>
<td>99</td>
</tr>
<tr>
<td>1960</td>
<td>15.9</td>
<td>15.7</td>
<td>(16.2)</td>
<td>99</td>
</tr>
<tr>
<td>1959</td>
<td>15.6</td>
<td>15.9</td>
<td>(16.2)</td>
<td>100+</td>
</tr>
<tr>
<td>1958</td>
<td>15.1</td>
<td>15.3</td>
<td>(15.7)</td>
<td>100+</td>
</tr>
<tr>
<td>1957</td>
<td>12.5</td>
<td>13.1</td>
<td>(13.5)</td>
<td>100+</td>
</tr>
<tr>
<td>1956</td>
<td>11.1</td>
<td>11.6</td>
<td>(11.9)</td>
<td>100+</td>
</tr>
<tr>
<td>1955</td>
<td>11.5</td>
<td>11.8</td>
<td>(12.1)</td>
<td>100+</td>
</tr>
<tr>
<td>1954</td>
<td>12.7</td>
<td>13.1</td>
<td>(13.4)</td>
<td>100+</td>
</tr>
<tr>
<td>1953</td>
<td>13.2</td>
<td>14.0</td>
<td>(14.3)</td>
<td>100+</td>
</tr>
<tr>
<td>1952</td>
<td>12.9</td>
<td>13.1</td>
<td>(13.5)</td>
<td>100+</td>
</tr>
<tr>
<td>1951</td>
<td>12.5</td>
<td>12.5</td>
<td>(12.9)</td>
<td>100+</td>
</tr>
</tbody>
</table>

Source: Yellow Cab Co. Annual Reports.

services and materials from affiliated companies.46 We were unable to discover whether those companies profit from their business with Checker and Yellow. It is clear that Checker and Yellow bear the expense of paying license fees on unused cabs and perform some special services for the Vehicle Commissioner.47 The fact most embarrassing for this public position of indigence is the value of the independent licenses. How can Checker and Yellow do so poorly if people are willing to pay so much for the right to engage in their business? This point was raised in the 1965 hearings of the Committee on Local Transportation of the City Council. Robert Samuels, then president of Yellow, answered:

We have never placed a value on these licenses [In 1957 when Samuels was of counsel in important litigation before the Illinois Supreme Court he stated: "Chicago taxicab licenses are worth and are currently transferred for approximately $10,000 each."48] because it has always been our attitude that these licenses belong to the City of Chicago. . . . [In 1961 Checker and Yellow successfully chal-

46 See Charts I to IV.
47 See pp. 303-04 infra.
lenged limitations on the assignability of their licenses in the Illinois Supreme Court.] This thing belongs to the people and the people should decide who is going to have them. . . . if anybody paid $2,500 for a cab license in the City of Chicago he ought to be committed.\textsuperscript{49}

To some it may sound improbable that Checker and Yellow could be maximizing their profits by leaving half of their cabs idle. However, this is to look at the wrong figure. The question is the relationship between the number of cabs operated, the number operated by the independents and the elasticity of demand. The function of the idle cabs is to protect Checker and Yellow's licenses so that they will not be reissued to others who might employ them in a competitive rather than a monopolistic fashion. It is possible to compute the market elasticity of demand which would make Checker and Yellow's present operating policies profit maximizing. This has been done in Appendix B.\textsuperscript{50}

Our calculations provide an estimate of elasticity in the range 4.7 to 3.3. This means that for a one per cent increase in fares more than three per cent of the customers will shift to other modes of transportation. We have compared Checker and Yellow's gross revenues for the years before and after the taxi fare increase of 1965. The figures suggest an elasticity of .8.\textsuperscript{51} However, the costs of competing modes of transportation may have increased over the same period, thus accounting for the lower apparent elasticity. The private car, the rental car and public transportation are alternatives to taxis. If the elasticity estimate provided by the calculations of Appendix B is accurate for the relevant range, then it is possible to evaluate the impact of the Chicago taxi monopoly. Using a high (for 1968) fleet operating cost estimate of $.10 a mile,\textsuperscript{52} the introduction of competition would reduce fares by 14 per cent (to the cost of $.86 per $1.00 of present fare) and total service

\textsuperscript{49} Chicago City Council, Committee on Local Transportation, Taxi Fare increase Hearings, Oct. 4, 1965, at 16-17.

\textsuperscript{50} See p. 349 infra.

\textsuperscript{51} The change in fares can be derived from Table 5, p. 341 infra. The change in gross revenues can be derived from Table 1. To translate the change in fares into percentage terms it is necessary to apply an estimate of the contribution to revenue from the initial flag pull charge and the mileage charge. Such estimates were provided in the 1965 fare increase hearings. These estimates indicate that the average revenue per 2.9 miles of haul was $1.32 in 1964 and $1.48 in 1966, or an increase of 12.1%. Revenues increased from $37,569,068 in 1964 to $38,489,202, an increase of 2.4%, or a decrease of 10% in constant fare dollars. The percentage decrease in constant dollar revenues, used as a measure of output, over the percentage increase in price per mile, is .8, the elasticity. This estimate is biased upward by the exclusion of the independents' output, presumably constant. Ralph Turvey, supra note 4, at 89-90, reports that a study by R. G. D. Allen for the Runciman Committee showed an elasticity around or below unity in London in 1951-1952. Gt. Brit., Comm. on the Taxicab Service, Report App. V (cmd. 8804, 1953). London licenses all qualified applicants, but the licensing standards are high.

\textsuperscript{52} Automotive Fleet, July 1969, at 32-34.
demanded and supplied would increase between 42 (elasticity 3) and 54 per cent (elasticity 4).

The value of the monopoly created by the regulation is the value of the licenses ($15,000) times the number of licenses operated full time (2,739). This totals $41,085,000.

III. The Purposes of the Regulation

The Chicago city code of 1866, in force at a time when Chicago was a frontier city of fewer than 300,000 people, contained a comprehensive system of regulation for horse-drawn carriers. Analysis of that and subsequent ordinances suggests that the regulation had a number of objectives: (1) to raise revenue through license fees; (2) to put limits on the terms of the contract of carriage to prevent the extraction of extortionate rates; (3) to organize the flow of cabs in traffic; (4) to impose minimum standards of condition and appearance on vehicles; (5) to ensure that drivers were likely to be responsible and law abiding; (6) to compel financial responsibility. An additional objective, to ensure adequate profits for taxi owners and adequate earnings for drivers, was advanced to justify the imposition of entry controls in the 1930's.

63 Chicago, Laws & Ordinances, ch. 47 (1866).
64 Id. at § 6.
65 Id. at § 7.
66 Id. at § 7.
67 Id. at §§ 13, 14, 15, 16, 17.
68 This was a late developing concern. The Code of 1922 provided that “if any ... [licensed] vehicle shall not be in good condition and appearance, clean and safe, and in case of horse-drawn vehicles, if the horse or horses are unfit for use, such license may, in the discretion of the mayor, be suspended for a period not exceeding sixty days.” Chicago Mun. Code, ch. 85 § 3920 (1922). From 1866 the ordinances required lamps for night operations. Chicago, Laws & Ordinances, ch. 47 § 4 (1866). The advent of automobiles brought the requirement of two independent braking systems. Chicago, Code of 1911, ch. 79 § 2595. The Code of 1922 required “powerful brakes,” signal devices and mufflers. Chicago, Code of 1922, §§ 4000, 4001, 4002.
69 By creating a list of the names and numbers of all drivers licensed and requiring them to wear a badge with their number on it. Chicago, Laws & Ordinances, ch. 47 § 5 (1866).
70 The 1866 ordinance required licensees of a public passenger vehicle to provide a bond “with sufficient sureties to be approved by the mayor, in the penalty of three hundred dollars, conditioned for the payment of all penalties and damages which the said owner or owners, and the driver or drivers thereof, may incur or be liable to pay under any by-law or ordinance of the city of Chicago, now in force, or that shall hereafter be established.” Chicago, Laws & Ordinances, ch. 47 § 1 (1866). The city ordinances did not require insurance for personal injuries to passengers until 1951. See pp. 313-16, infra.
A. Revenue

Revenue would be a straightforward objective of taxicab regulation. Taxicabs conduct their business exclusively on the public streets. Surely a user charge in the form of an annual license fee imposed on each cab is a possible way to charge for the use of this public asset. Yet Chicago has shown a singular lack of interest in this aspect of taxi regulation. In 1866 the fee for a taxicab was $5.00.\(^{60}\) It was still $5.00 sixty-seven years later in 1933. In 1934, as part of the general effort to reduce the number of taxicabs, an additional fee of 3 mills an operated mile ($300 a year if a cab is operated 100,000 miles a year) was proposed as a charge for the use of the streets.\(^{61}\) Because of complaints from licensees, this was changed to a fee of $12.50 a quarter or $50.00 a year.\(^{62}\) The total fee was reduced to $40.00 in 1951,\(^{63}\) then raised to $60.00 in 1959.\(^{64}\) The present fee now generates $276,000 in revenues for the city or one-half of one percent of our estimated industry gross revenue of 54 million dollars. It is difficult to estimate the cost of administering the regulation. Chicago has no detailed public budget accessible to citizens.\(^{65}\) The Public Vehicle License Commission has a staff of 22\(^{66}\) persons whose combined payroll we estimate at $8,000 a person or $176,000. In addition, a Chicago newspaper reports that 24 officers of the police traffic division are assigned to taxi ordinance enforcement.\(^{67}\) At $8,000 a year these men would require a payroll of $192,000, for a combined payroll cost of $368,000. The total fee income of the Commission (including fees from liversies, sightseeing buses, ambulances and chauffeur licenses and a number of miscellaneous fees) in 1968 was $377,123,\(^{68}\) suggesting that the industry does not even pay for the operation of the regulation itself\(^{69}\) and pays nothing for the use of the streets other than regular city taxes. In addition to the ordinance fees, Checker and Yellow perform some special services for the city by paying for the starters

\(^{60}\) Chicago, Laws & Ordinances, ch. 47 § 6 (1866).

\(^{61}\) Chicago Tribune, May 4, 1934, at 3.

\(^{62}\) Chicago Tribune, May 12, 1934, at 1.

\(^{63}\) Chicago City Council, Journal, Dec. 20, 1951, at 1597.


\(^{65}\) Chicago uses a code system in its budget and only aldermen (or constituents and the aldermen together) can get the code key. Since over 40 of the 50 aldermen are staunch administration supporters, it is difficult for an outsider to gain access to the code key.


\(^{67}\) Chicago Today, July 13, 1970.

\(^{68}\) Public Vehicle License Comm'n, supra note 66, at 3.

\(^{69}\) $368,000 represents only salary costs. It does not include supplies, vehicles, office space, office equipment, etc. Thus, the fees do not even cover the direct costs of regulation.
who man the substantial taxi staging and dispatch system at O'Hare airport and occasionally providing starters at downtown hotels during conventions.\textsuperscript{70} Both services are used by all city cabs. In his 1962 annual report, the Vehicle Commissioner referred to the operation of the O'Hare system as the Commission's "greatest challenge." In his 1964 report, he said that special credit must be given to the operators of the Yellow and Checker fleets for . . . making taxicab dispatching and loading at . . . [O'Hare] . . . a credit to the City of Chicago. These companies have borne the expense of purchasing and maintaining the equipment as well as furnishing the man power to supervise and operate this service since its inception.\textsuperscript{71}

B. Rates of Fare

Fares as opposed to fees have always been the central concern of the regulation. On first inspection this regulation of fares appears to be typical utility rate regulation designed to substitute regulated for negotiated prices and limit the regulated firms to a reasonable profit. But further examination of the regulation has led us to conclude that in fact the original purposes of the fare regulation were quite different. Prior to 1934 the fare regulation was apparently designed to put maximum limits on the negotiating position of the driver. In 1934 the fare regulations were converted to minimum price provisions designed to eliminate price competition and make taxicab operations more profitable.

Our interpretation of the fare provisions prior to 1934 is based upon circumstantial evidence and is not entirely satisfactory. The ambiguity begins with the 1866 code. Although the ordinance provided that the only fare "shall be" 50 cents for the first mile,\textsuperscript{72} another section prohibited a driver from refusing to convey a passenger requesting service or charging any rate of fare greater than that established by the ordinance.\textsuperscript{73} A third section provided for a fine or forfeiture of the license for violation of any section of the chapter.\textsuperscript{74} This would appear to include both undercharging and overcharging, but if so, why was it thought necessary to include a section specifically prohibiting only overcharging? The only explanation we can offer is that in spite of the wording to the contrary, the fare section was understood as a maximum. This construction is strengthened by the fact that although the ordinance was amended in 1885 to specifically provide only maximum rates for one-horse


\textsuperscript{72} Chicago, Laws & Ordinances, ch. 47 § 7 (1886).

\textsuperscript{73} Id. at § 10.

\textsuperscript{74} Id. at § 20.
vehicles.\textsuperscript{76} the change was noted in the contemporary press only as a change in the level of the ordinance rates.\textsuperscript{76} It seems peculiar that maximum rates would be set for one-horse vehicles and mandatory rates would be set for larger vehicles. The mystery is deepened by the fact that the wording of the one-horse rate section was changed in the Code of 1905,\textsuperscript{77} making it once again an apparent mandatory rate provision. Yet only four years later the ordinance providing for taximeter rates was explicitly worded as a maximum, again without note in the press.\textsuperscript{78} The evidence is conclusive that in the late '20's and early '30's, under this ordinance, the actual rate of fare asked and collected in the city was substantially below the ordinance rate.\textsuperscript{79} This practice, the inattentive wording of the ordinance, and lack of note in the press lead us to conclude that the ordinance was always understood as a maximum rate ordinance which permitted the driver and his passenger to negotiate a lower rate if they chose to do so.

Regulation of this type appears not to have been unprecedented in nineteenth-century Illinois. In 1827 the Illinois legislature passed an act regulating ferries, toll bridges and turnpikes which gave county commissioners power to set rates and provided that any keeper of such a facility who charged in excess of the established rate should pay to the person so overcharged the amount charged and the additional sum of $5.00.\textsuperscript{80} The statute explicitly provided that the rates should be based not upon cost but upon "the breadth and situation of the stream or water course over which such ferry or bridge shall be established, the dangers and difficulties incident thereto, the length, breadth, quality of the road, and the publicity of the place at which the same shall have been established"\textsuperscript{81}—that is, the demand for service. Similarly, the rate provisions of the Chicago taxi ordinances showed little interest in cost, making only gross distinctions based upon the quality of the vehicle, and remaining fixed over long periods of time. The state statute also provided that the keeper must post his rates, not to exceed those established by the county, in a manner "open and legible" to all users.\textsuperscript{82}

\textsuperscript{76} The section read: "The prices of rates of fare to be asked or demanded by the owners or drivers of cabs, or other vehicles drawn by one horse . . . shall be not more than as follows. . ." Chicago, Laws & Ordinances, ch. 5, § 1695 (1890).

\textsuperscript{77} Chicago Tribune, Aug. 11, 1885.

\textsuperscript{78} Chicago Mun. Code, ch. 69, § 2275 (1905).

\textsuperscript{79} Chicago Tribune, March 23, 1909.


\textsuperscript{81} An Act to provide for the Establishment of Ferries, etc. Feb. 12, 1827, § 6, Ill. Rev. Laws at 305 (1833).

\textsuperscript{82} Id.

\textsuperscript{83} Id. at § 7, Ill. Rev. Laws at 305-306 (1833).
Similarly, the Chicago Code of 1873 provided that the driver must print up cards showing the ordinance rates and that "upon each passenger or passengers entering such conveyance, the driver shall hand one of such cards to the person or persons entering," as well as requiring that the rates be posted in the cab. Later ordinances required only posting. The state statute also obligated tollkeepers and ferrymen to provide passage to those tendering the posted fare. Similarly, the Chicago taxi ordinances prohibited a driver from refusing to convey anyone anywhere in the city who tendered the applicable fare.

What is the function of a system of regulation of this type? In 1874 the Illinois Supreme Court explained that the Chicago ordinance is "designed to operate upon those who hold themselves out as common carriers in the city for hire, and to so regulate them as to prevent extortion, imposition and wrong to strangers and others compelled to employ them." The design of the regulation appears to be to remove the power of the keeper or driver to charge more than the going rate by informing the user of the rate and to undercut the keeper's or driver's bargaining power by imposing a duty to convey. The regulation protects strangers—those who do not know the ordinary rate of fare—and others compelled to use the service—those who, because of the urgency of their needs, are unable to bargain effectively. It should be noted that these persons need such protection only in the absence of competition. Where more than one firm is vying for the custom of a stranger, there will be incentives for a competitor to inform the stranger of the availability of a lower rate. And where more than one cab can be found easily the bargaining position of the passenger is obvious and an unreasonable fare will not be demanded—even from those who appear in a hurry. Ferries, tollroads and taxis have in common the fact that some of their customers have competitive choices but others do not. Some travellers—particularly those

83 Chicago, Laws & Ordinances, ch. 54 § 8 (1873).
84 Id. at § 23.
85 Chicago, Laws & Ordinances, ch. 5 § 1698 (1890); id. at 2278 (1905); Code of 1911, ch. 79 §§ 2572, 2661; Chicago Mun. Code, ch. 85 § 3966 (1922).
86 As to toll roads the statute provided that "every keeper of a toll bridge or turnpike road, shall, in like manner, be required to keep the same at all times in good repair, so as to afford a safe and speedy passage to all persons, their teams, horses, cattle, and other animals, who may have occasion to use the same." An Act to provide for the Establishment of Ferries, etc. Feb. 12, 1827, § 4 Ill. Rev. Laws at 304 (1833). As to ferries, the statute provided that "all persons shall be received into such ferry boats or other vessels as aforesaid, and conveyed across the water course, over which the same shall be established, according to their arrival or first coming to the said ferry." Id. at § 8, Ill. Rev. Laws at 306 (1833).
87 Chicago, Laws & Ordinances, ch. 47 § 9 (1866); id. at ch. 54 § 21 (1873); id. at ch. 5 § 1707 (1890); Chicago Mun. Code, ch. 69 §§ 2285, 2315 (1905); Code of 1911, ch. 79 §§ 2579, 2607; Chicago Mun. Code, ch. 85 § 3966 (1922).
88 Farwell v. Chicago, 71 Ill. 269, 272 (1874).
travelling longer distances—will have many alternative routes. Others will have none. At busy times in busy parts of the city there will be ample competition in cabs. In off hours or in the more removed neighborhoods there may be only one cab available at the time and place it is needed.\textsuperscript{89}

If the maximum rate under regulation of this type is properly set it can prevent a windfall transfer from customer to operator with no undesirable impact on the allocation of the service or its availability. The necessary condition is that the maximum be set at or above, but not too far above, the marginal cost of providing the service. If the maximum price is set below the marginal cost of providing the amount of service demanded at that price, it will reduce supply. As long as the maximum is above the marginal cost of supplying the amount of service demanded, the service will be supplied. But if the established price is too far above the marginal cost, then the ordinance will facilitate, not hinder, defrauding the uninformed by putting state approval behind a demand for an unreasonable fare. A price which is clearly above marginal cost can easily be determined by reference to the price paid by those customers who are informed about the market price and who have alternatives. If all business is moving at the established rate, it may well be too low. If the established rate is above much but not all of the business, it is probably about right. However, if variations in the marginal cost of providing the service at different times or under different conditions are large, then it is impossible to set a maximum which is not either so far above the standard rate as to induce overreaching or so low as to be below the marginal cost of providing the service under other conditions. The state statute applying to ferries and tollroads dealt with this problem, first by providing that the fare or toll at nighttime was twice that during the daytime\textsuperscript{90} and then by exempting any ferryman from the duty to convey “when it manifestly appears to be hazardous so to do by reason of any flood, storm, tempest, or ice.”\textsuperscript{91} In the absence of a duty to convey, the ferryman was presumably free to make his own arrangements. The Chicago taxi regulation appears not to have considered the problem, making no special rate provisions for nighttime operations or for bad weather. This may not have presented a serious problem because the costs did not vary greatly and the ordinance rates could be set high enough to cover the costs of operating under adverse conditions. The custom of the tip must have ameliorated this problem to some extent with higher tips for coachmen venturing out under difficult conditions.

The protection provided by this system for the uninformed or the hurried

\textsuperscript{89} The cabman’s power to charge what the traffic would bear when needed would increase the incentive for cruising or waiting in outlying neighborhoods or in off hours, thus ameliorating the problem.

\textsuperscript{90} An Act to provide for the Establishment of Ferries, etc. Feb. 12, 1827, § 5, Ill. Rev. Laws at 304 (1833).

\textsuperscript{91} Id. at 305.
is greater than that provided by the common law. The common law imposed upon the common carrier and other public service undertakings the obligation to serve the public at a reasonable rate.92 In reality, a judicial determination of the reasonable rate was based upon the customary or ordinary rate.93 The common law obligation of the carrier or inn-keeper was derived from his public holding out. He held himself out to serve the public, but the price term was ambiguous. The traveller who set out on the public way in an important sense both accepted and relied upon the holding out. The courts inferred a price term from the bargain. But the protection afforded by the common law rules was slight. The person who through ignorance or hurry paid the overcharge could only sue for the amount of the overcharge,94 which was probably minimal. The person who refused to pay could sue for his inconvenience, probably of little provable monetary value. The Illinois statute provided a more effective remedy. The posted rates gave everyone information as to the level of reasonable rates. When more was demanded the person could simply pay it and then sue for the amount paid plus an additional $5.00, a recovery under the simple procedure of the day probably well worth his while.95 Under the Chicago cab ordinance, an overcharge could result in a criminal fine and loss of the license,96 with the costs of the litigation (except for the witness's time) borne by the city. Thus the regulatory scheme created a simpler and more effective remedy for the exaction of unreasonable rates.

The fact that the problems of contractual formation were viewed as central to the fare regulation is further revealed by the fact that the fare regulation was not, and still has not been, extended to liveries. Livers are cabs that

92 William W. Story, A Treatise on the Law of Contracts, § 757 at 656 (1847): "A common-carrier is bound to receive and carry all goods offered for transportation, upon offer, or tender of a suitable compensation; and, if he refuses, he is liable for an action, unless there be a reasonable ground for such refusal." Id. at § 744 at 647: "[An inn-keeper] is bound to receive all guests who come. . . for a reasonable compensation."

93 Robert Hutchinson, 2 A Treatise on the Law of Carriers, § 1023 at 1180 (3rd ed., 1906): "Where no statute is found . . . the carrier is entitled to demand and receive, and the passenger is entitled to be carried upon tendering, a reasonable compensation, and what is reasonable is, here as in other cases, ordinarily a question of fact to be determined in view of all the circumstances of each particular case. If the rate has been fixed by usage, the passenger, in the absence of special circumstances, would be entitled to carriage upon tendering the usual rate."

94 The English cases suggest a criminal remedy. Newton v. Trigg, 89 Eng. Rep. 566 (1690); "Inn-keepers are compellable by the constable to lodge strangers. . . ."

95 The statute provided that the amount of the overcharge plus the fine could be "recovered before any justice of the peace of the county wherein such offense be committed." An Act to provide for the Establishment of Ferries, etc., Feb. 12, 1827, § 6, Ill. Rev. Laws at 305 (1833).

96 Chicago, Laws and Ordinances, ch. 47 § 20 (1866).
do not cruise the streets but rather are dispatched to pick up passengers by prearrangement.97 They became important only after the introduction of the telephone. No license was required for liveries until the ordinance of 1905,98 and then only as a revenue measure. Although the cab provisions of the ordinance had always applied, to quote the 1905 ordinance, to “vehicles used anywhere within the city for the carrying or conveying of persons for hire or reward,”99 this was understood not to apply to liveries. The Code of 1866 specifically exempted liveries from the licensing requirements,100 and the exemption was continued in the Code of 1873.101

Although the 1890 code did not specifically exempt liveries,102 an annotation referred to an 1885 case which held that such an ordinance did not apply to livery operators. The court found that the defendant in that case “was in no legal sense a common carrier” when, as the owner of a livery stable, he hired two of his teams to another person “to be used for the temporary purpose of hauling a quantity of ice.” The court held that the defendant “was not within the terms or spirit of the ordinance.”103 The apparent reason was that in the livery case, the vehicle was not used to carry passengers or goods for hire, but rather was rented to persons who used it themselves.104 Whatever the shakiness of this concept, the functional basis of the distinction seems clear. The person who is in a position to call for a car is in a position to call any number of firms. He can read their advertisements, sample their rates. If he has the foresight to call he is probably informed, and if he is in a position to call, he has a choice. In short, there is no problem of lack of competition and hence no need for rate regulation.

The protective scheme of the early ordinances suffered from one serious defect. It could not prevent misrepresentation to the uninformed as to the distance actually travelled. The Code of 1866 dealt with this problem in part by providing “that the distance from any railroad depot, steamboat landing or hotel, to any other railroad depot, steamboat landing or hotel, to any other railroad, steamboat landing or hotel, shall in all cases be estimated at not

97 The present ordinance, Chicago Mun. Code § 28-1 (n), defines a livery vehicle as “a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.”
99 Id. at § 2261.
100 Chicago, Laws & Ordinances, ch. 47 § 1 (1866).
101 Id. at ch. 54 § 1 (1873).
102 Id. at ch. 5 § 1679 (1890).
104 Although the Havana case involved carriage of goods, the reasoning applies also to carriage of persons for hire. See Terminal Taxicab Co. v. Kutz, 241 U.S. 252 (1916) for an elaboration by Justice Holmes.
exceeding one mile.\textsuperscript{105} As Chicago became larger, this solution became impossible. The taximeter, however, provided an answer to this problem and in 1909 the Council provided for inspection and certification of taximeters by the Department of Weights and Measures,\textsuperscript{106} a function now taken over by the Vehicle Commissioner.\textsuperscript{107} The Code of 1922 required a taximeter,\textsuperscript{108}

C. Traffic Congestion

Cabs present a special problem for traffic flow because in the process of picking up or discharging passengers they may obstruct other traffic. The basic approach of the Chicago ordinance has been to designate specific areas as hack stands. From an early date the ordinances required the driver to remain with his cab and forbade disorderly conduct "to the annoyance or disturbance of citizens or travelers."\textsuperscript{109} The Code of 1922, which established the most detailed regulation of this type, went further and provided that "only the driver, sitting in the driver's seat, can solicit passengers on the streets or in public places."\textsuperscript{110} It also allowed cabs to stand at public places of amusement from 15 minutes before the conclusion of the performance, at railroad stations and public boat landings, and on all streets on Sunday and everyday between the hours of 6:30 p.m. and 6:30 a.m. where the police superintendent judges that local traffic conditions will permit. At other times cabs could park only at hack stands.\textsuperscript{111} The declining level of taxicab service apparently made this prohibition—which required the determination for many areas that local traffic conditions would permit the location of cab stands—unduly complex so the present ordinance simply prohibits the cab driver from stopping, standing, or parking "such vehicle upon any business street, or in any block of any other street where a taxicab is already parked, at any place other than in a taxicab stand, except for the expeditious loading and unloading of passengers or when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or a sign or signal."\textsuperscript{112} Some cab stands still exist under the current Code. The law on solicitation has been relaxed to simply prohibit the chauffeur from joining "in any assembly or crowd of person upon any public way" and requires him to remain "in the immediate proximity" of his vehicle.\textsuperscript{113}

\textsuperscript{105} Chicago, Laws & Ordinances, ch. 47 § 7 (1866).
\textsuperscript{106} Chicago Code of 1911, ch. 79 § 2657.
\textsuperscript{107} Chicago Mun. Code, § 28-25.
\textsuperscript{108} Chicago Mun Code, ch. 85 § 3956 (1922).
\textsuperscript{109} Id. at § 3981.
\textsuperscript{110} Id.
\textsuperscript{111} Id. at § 3982.
\textsuperscript{112} Chicago Mun. Code, 27-27b(d).
\textsuperscript{113} Id. at § 28.1-11.
The most difficult problems of cab movement occur around terminals and other places where large numbers of persons arrive and depart by cabs in a short period of time. In Chicago, the railroad terminals have their own regulations for the movement of cabs to pick-up areas. At the airports, owned and operated by the city, the movements of cabs is governed by the ordinance and regulations promulgated by the Vehicle Commissioner. The 1922 Code contained a special provision for other places where cabs might be expected to congregate by providing that no driver “shall seek employment by repeatedly or persistently driving his vehicle to and fro in a short space” before “any place of public gathering,” but permitting the driver to pass and repass “provided that after passing such public place he shall not turn and repass the same until he shall have gone a distance of two blocks. . . .”

D. Vehicle Standards

The present ordinance provides that “if any public passenger vehicle shall become unsafe for operation or its body or seating facilities shall be so damaged, deteriorated or unclean as to render said vehicle unfit for public use, the license therefor shall be suspended by the commissioner.” The concern of Chicago’s regulators with the condition of the vehicle seems to have been more appearance than safety oriented. The regulation requires no special safety devices on cabs and when the drivers recently demanded that all cabs be equipped with a partition to protect drivers against assaults, they went to the state legislature not the Vehicle Commissioner to obtain it. The spirit of the Commissioner’s concern is perhaps best captured in the 1968 Annual Report where a page is dedicated to two pictures of Yellow cabs with bent fenders before a grim-faced inspector. “Two rejects,” reads the cutline, “at one of the fleet garages where inspections are made.” No regular maintenance of cabs is required. The Commissioner does run a regular check to insure that no licensed vehicles are more than 5 years old, but any regularly used cab would be inoperable long before that. Appearance and condition was not originally a concern of the regulation, apparently on the assumption that passengers could decide for themselves whether or not a cab’s condition was such that they wished to ride within it. The Code of 1905, however, created a “board of inspectors” whose duties included the obligation “to make or

119 Project interview with Public Vehicle License Commiss’er, James Carter.
cause to be made a daily inspection of every cab and hack stand within the city, for the purpose of noting the condition of the vehicles licensed hereunder and of the horses attached thereto and the drivers thereof. It is perhaps of interest to a city that its public vehicles, as its public places, should appear in good order and condition. But it is difficult to place the concern at a very high level of priority.

E. **Driver Standards**

The licensing and regulatory provisions of the ordinances reveal concern with driver crime. Drivers have considerable power over their passengers because of their control of the vehicle. An unsuspecting passenger who enters a taxi, particularly one who is physically weak or unfamiliar with the city, can be quickly transported to an out of the way place where robbery or rape can be committed by the driver without difficulty. Secondly, drivers are in an advantageous position to solicit customers for gambling and vice operations. The approach of the Chicago regulation has been to deal with these problems first by requiring a character investigation of drivers, second, by a system of registration and identification of drivers to make them easier to identify if they commit a crime, and third, by prohibiting drivers from soliciting patronage for restaurants, bars, hotels, or brothels. Drivers, however, are not prohibited from providing information about these facilities. The system appears to work: the principal problem of taxi crime in Chicago today seems to be assaults on, not by, drivers.

Each driver of a public passenger vehicle under the present ordinance is required to have a public chauffeur license from the city in addition to the regular state chauffeur’s license. The key provision of the ordinance is the requirement that “the character and reputation of each applicant shall be investigated under the supervision of the captain of the police district in which the applicant resides, and a report of such investigation containing any facts relevant to the character and reputation of the applicant shall be forwarded by the captain to the commissioner of police, who shall forward the same to the Commissioner together with his recommendation. If the Commissioner shall be satisfied that the applicant is of good character and reputation and is a suitable person to be entrusted with driving a public passenger vehicle, he shall issue the license.”

Although some of the requirements of the ordinance—for instance that the applicant be of sound physique—might be considered overly restrictive, the

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120 Chicago, Laws & Ordinances, ch. 69 § 2260 (1905).
Commissioner, perhaps in part because of pressure from the companies for drivers, seems not to have been overly restrictive in his interpretation. The present ordinance is certainly less restrictive than that of the Code of 1922 which, among other things, required the applicant to produce "affidavits of his good character from two reputable citizens who have known him personally and observed his conduct during one year preceding the date of his application."\textsuperscript{123}

The key to the identification system is the requirement that each applicant submit pictures and fingerprints.\textsuperscript{124} The fingerprints permit accurate checking for a criminal record. The picture is affixed to the license which the driver is required to display in the vehicle he is driving. If the passenger makes the effort, he can use the picture to insure that the license is in fact that of the driver, and from the license learn the driver's name. Whether or not many passengers do this, the system does to some extent give drivers the feeling that their identity is known.

In the early ordinances, different devices were used. The Code of 1873, for instance, required the driver to carry printed cards with his name, place of residence and the number of the conveyance on it, in addition to the fares, and to hand a card to each passenger.\textsuperscript{125} As long as the passenger had the card in his possession, identification was easy. In addition, the Code provided that a driver should be licensed only to drive particular vehicles,\textsuperscript{126} and that no more than one driver should be licensed for each vehicle.\textsuperscript{127} As a result, a passenger who could identify the vehicle would enable the police to identify the driver. The requirement of individual cards was dropped by the time of the Code of 1890;\textsuperscript{128} the requirement of one driver for one vehicle was dropped for automobiles in the Code of 1911.\textsuperscript{129}


The Chicago regulation has never taken great interest in the problem of financial responsibility. Although early ordinances required owners and later drivers to post bonds, their aim was principally to indemnify the city "for penalties and damages . . . under any by-law or ordinance of the city of Chicago."\textsuperscript{130} In 1911, the ordinance was changed to make the bond of $100

\textsuperscript{123} Chicago Mun. Code, ch. 85 § 3921 (1922).
\textsuperscript{125} Chicago, Laws & Ordinances, ch. 54 § 8 (1873).
\textsuperscript{126} Id. at § 5.
\textsuperscript{127} Id.
\textsuperscript{128} Chicago, Laws & Ordinances, ch. 5 § 1694 (1890).
\textsuperscript{129} Code of 1911, ch. 79 §§ 2558, 2593.
\textsuperscript{130} Chicago, Laws & Ordinances, ch. 47 § 1 (1866).
<table>
<thead>
<tr>
<th></th>
<th>Total Revenue</th>
<th>Total Expenditures</th>
<th>Profit</th>
<th>Depreciation</th>
<th>M&amp;R</th>
<th>PLI</th>
<th>Property Tax</th>
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<tbody>
<tr>
<td>Yellow (2166)</td>
<td>$8,707</td>
<td>$8,515</td>
<td>$192</td>
<td>$651</td>
<td>$611</td>
<td>$632</td>
<td>$85</td>
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<tr>
<td>Checker (1500)</td>
<td>11,487</td>
<td>11,069</td>
<td>418</td>
<td>967</td>
<td>52</td>
<td>847</td>
<td>72</td>
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<tr>
<td>Weighted Average of Checker and Yellow</td>
<td>9,844</td>
<td>9,560</td>
<td>284</td>
<td>780</td>
<td>392</td>
<td>720</td>
<td>79</td>
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<tr>
<td>Public Taxi</td>
<td>9,008</td>
<td>8,170</td>
<td>839</td>
<td>1,095</td>
<td>477</td>
<td>1,963</td>
<td>N/A</td>
</tr>
<tr>
<td>Service (103)</td>
<td>11,930</td>
<td>11,238</td>
<td>692</td>
<td>661</td>
<td>3,849</td>
<td>1,615</td>
<td>52</td>
</tr>
<tr>
<td>Morgan and #2 (34)</td>
<td>3,333</td>
<td>2,683</td>
<td>650</td>
<td>274</td>
<td>476</td>
<td>1,506</td>
<td>—</td>
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<tr>
<td>Hardin (21)</td>
<td>24,247</td>
<td>23,321</td>
<td>926</td>
<td>1,311</td>
<td>3,098</td>
<td>1,506</td>
<td>84</td>
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<tr>
<td>Highland and #2 (18)</td>
<td>4,491</td>
<td>4,505</td>
<td>—14</td>
<td>500</td>
<td>2,191</td>
<td>1,500</td>
<td>—</td>
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<tr>
<td>Daigre (12)</td>
<td>9,157</td>
<td>6,995</td>
<td>2,162</td>
<td>897</td>
<td>1,776</td>
<td>1,505</td>
<td>25</td>
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<tr>
<td>American (7)</td>
<td>4,314</td>
<td>4,095</td>
<td>219</td>
<td>1,040</td>
<td>943</td>
<td>1,560</td>
<td>—</td>
</tr>
<tr>
<td>Three Owners of three (9)</td>
<td>5,724</td>
<td>4,329</td>
<td>1,395</td>
<td>331</td>
<td>1,459</td>
<td>1,548</td>
<td>—</td>
</tr>
<tr>
<td>Seven owners of two (14)</td>
<td>8,813</td>
<td>6,975</td>
<td>1,838</td>
<td>1,117</td>
<td>1,758</td>
<td>1,361</td>
<td>270</td>
</tr>
</tbody>
</table>

“payable to the city of Chicago, for the use of any person who may be injured or damaged or aggrieved by any neglect or refusal of such license to observe and obey the ordinances and regulations (of the city).” 131 But it was not until the state enacted a financial responsibility law in 1921 132—requiring a $10,000 bond or insurance policy per vehicle—that cab patrons began to get adequate protection. After encountering constitutional difficulty, 133 the statute was reenacted in 1923 to require a $2,500 bond or insurance policy. 134

The city required nothing more than the state even when, in the early 1930’s, complaints about insolvent owners and operators increased. Instead, in 1934, the City Council passed a resolution stating:

Whereas, One of the most important provisions customarily contained in taxicab laws and ordinances is that of requiring taxicab operators to carry public liability insurance . . . . Not only does this protect the public from loss due to accidents in which taxicabs may be involved, but it also tends to eliminate financially irresponsible taxicab operators, who are often unable, because of financial or other reasons, to secure the necessary insurance coverage . . . . the City Council . . . respectfully request . . . the members of the State legislature to change the State law of Illinois so as to provide the following liability limits per taxicab: [$5,000.00/5,000/1,000]. 135

In 1951 the city itself amended the ordinance to require liability insurance in the amount of $50,000/100,000/$5,000. 136 These limits remain in effect. The 1951 ordinance required that the insurance company must be qualified to transact insurance business in the State of Illinois and that the insurer must have a net worth of at least $1 million. 137 Less than two months later the ordinance was revised, eliminating the net worth requirement. 138 This may have been done to permit Checker and Yellow to satisfy the requirements of the ordinance by means of their own mutual insurance companies. This they have done, Yellow through the Calumet Mutual Insurance Company and Checker through the City Mutual Insurance Company. This device enables Yellow and Checker to maintain control over the assets set aside for

131 Code of 1911, ch. 79 § 2559.
133 People v. Kastings, 307 Ill. 92, 138 N.S. 269 (1923).
135 Chicago City Council Journal, May 18, 1934, at 2273–74.
136 Id., Dec. 20, 1951, at 1598.
137 Id.
insurance purposes. In 1968 the policyholder’s surplus of each company was around $1,000,000.\textsuperscript{139}

IV. THE IMPOSITION AND DEFENSE OF ENTRY CONTROLS: 1929-1970

The use of the automobile as a public passenger vehicle appears to have expanded rapidly until about 1929. Early sales of automobiles were to two markets: the affluent pleasure market and the taxicab market. The first motorized taxi service was begun in New York City in 1896 with electric cabs.\textsuperscript{140} We have been able to compile a fairly reliable series of the number of taxis actually operated in Chicago from 1929 on. The series is set forth in Table 4. The decline is steady, with the exception of the post-World War II period when a shortage of private passenger cars led to a resurgence of demand.\textsuperscript{141} Initial efforts to control entry into the taxicab industry came from

\begin{table}
\centering
\caption{Time Series, Number of Chicago Cabs}
\begin{tabular}{|c|c|c|c|}
\hline
Year & Regular Licenses & Temporary Licenses & Illegal Operators & Liveries \\
\hline
1929 & 5289 & & & \\
1934 & 4108 & & & \\
1937-1945 & 3000 & & & \\
1946 & 3000 & 275\textsuperscript{a} & 1020-2200\textsuperscript{b} & 1300\textsuperscript{e} \\
1947 & 3000 & 275 & 1200\textsuperscript{c} & \\
1948-1950 & 3000 & 950 & & 1328 \\
1951 & 3000 & 950 & & 1341 \\
1952 & 3761 & & & 510 \\
1954 & 3742 & & & 427 \\
1959-1968 & 4600 & & & 372-327 \\
1969 & 4600 & & 300+\textsuperscript{d} & 327 \\
\hline
\end{tabular}
\end{table}

\textit{Notes and Sources:}
\begin{itemize}
\item \textsuperscript{a} Chicago City Council, Journal, Feb. 28, 1966, at 5166.
\item \textsuperscript{b} \textit{Chicago Daily News}, November 1946, editorial.
\item \textsuperscript{c} Chicago City Council, Journal, Sept. 10, 1947, at 852.
\item \textsuperscript{d} \textit{Chicago Tribune}, Feb. 23, 1969, \textsect 7 (Magazine), at 24.
\item \textsuperscript{*} Public Vehicle Comm’n, Annual Report.
\end{itemize}

\textsuperscript{139} Files of Illinois Dept’ of Insurance, Chicago Offices.


\textsuperscript{141} Ross D. Eckert, Regulatory Commission Behavior: Taxi Franchising in Los Angeles and Other Cities (University Microfilms, Unpublished Ph.D. Thesis 1968), reports that the number of licenses in 34 entry regulated cities increased by 1,071 or 3% between 1955 and 1967. \textit{Id.} at 174-75. Without the increase of 1,600 licenses in Chicago
the operators of mass transit rail facilities who correctly viewed the automobile as a threat to their business. They attempted to secure protection by persuading utility commissions and the courts that public service automobiles required a certificate of public convenience and necessity. In Illinois mass transit firms secured an initial success when the Illinois Commerce Commission held that jitneys following a fixed route parallel to an established mass transit line required a certificate, but were rebuffed when they attempted to extend the precedent to the Yellow Cab Co. of Chicago.\textsuperscript{142} The Illinois Commerce Commission has played no further role in the regulation of taxicabs in Chicago, except for a brief episode in the period 1948 to 1951 when it held, at the behest of an association of merchants along South Park (now King Drive), that the jitneys on South Park were illegal because of the lack of a certificate.\textsuperscript{143} When no one came forward to enforce the order, the merchants took the Commission, the attorney general, the mayor, the police commissioner, the public vehicle license commissioner and the Chicago Park District (which had jurisdiction over the parkway) to court in a mandamus proceeding. The Attorney General answered that the problem was one for local law enforcement officials to handle; the city said that South Parkway was under the jurisdiction of the Park District; the Park District claimed that it was without authority to enforce an order of the Illinois Commerce Commission. All defendants were, however, able to agree that mandamus was an improper remedy.\textsuperscript{144} Apparently the litigation was pursued no further, perhaps because the city’s policy, which will be discussed below, of squeezing out the irregular operators who had appeared after World War II was by then (1951) working sufficiently well to satisfy the merchants, or by then the merchants had accepted the changing nature of South Park.

The initial reaction of the taxi industry was, of course, to oppose legal limitations on its growth. But by 1929, when the National Association of Taxi Operators passed a resolution favoring entry controls, the established operators had set upon a policy of obtaining entry limitations.\textsuperscript{145} The mass


\textsuperscript{143} South Parkway Improvement Ass'n v. Morgan, 28 Ill. Com. Comm'n Opinions 356 (1948). It is not clear why the merchants were concerned. An abundance of jitneys should have facilitated access to their stores. On the other hand, the traffic generated may have detracted from the shopping atmosphere on the street. The litigation may have also been related to the changing racial character of the Parkway.

\textsuperscript{144} Chicago Sun Times, Sept. 12, 1951 at 16.

\textsuperscript{145} New York City, Report of the Mayor's Comm'n on Taxicabs, Sept. 23, 1930, at 47.
transit operators became interested but largely passive bystanders. Echoes of the early efforts were apparent when in July of 1970 Chicago Today reported with what must have been feigned surprise that illegal jitney operations were taking business from the financially troubled, publicly owned, Chicago Transit Authority. "The CTA," reported Chicago Today, "has complained to the police and Public Vehicle Commissioner James Y. Carter, a spokesman for the debt-ridden facility said. . . . Carter says there are no jitney cabs operating in Chicago. I closed down the last jitney operation three years ago," the Commissioner said. "There are no jitneys operating in Chicago now. Every taxi on the street is licensed by my office."\textsuperscript{148} What Carter means is that there are no unlicensed cabs operating as jitneys anymore.

The resolve of the taxi owners to obtain entry controls in 1929 bore fruit quickly. Morris Markin, President of Checker Motors, pursued the policy with particular energy moving simultaneously in New York, Chicago, Minneapolis and Pittsburgh to unify control of the large operators while obtaining the introduction of entry controls in both Chicago and New York.\textsuperscript{147} Although the drive for entry controls was justified by reference to the public interest, the clear motive was lower costs and higher prices. In Chicago, the effort proved more difficult than first appeared. On July 1, 1929 a representative of Checker testified that entry limitation would stop taxi wars caused by too many cabs and Yellow testified that limitations were necessary to insure financial responsibility. "That's the only thing," the Yellow representative assured the Council, "Yellow cab is interested in."\textsuperscript{148} Alderman Toman, sponsor of the ordinance, somewhat prematurely assured the Committee that the ordinance "is practically a copy of an ordinance that is being passed in every large city in the United States" and incorrectly explained that the Vehicle Commission was unable, under existing law, to reject an applicant because of the poor condition of his vehicle. The proposed ordinance required an applicant for a license other than by renewal "to establish by clear, cogent and convincing evidence which shall satisfy the said Public Vehicle License Commission beyond a reasonable doubt, that public convenience and necessity require such operation of the vehicle."\textsuperscript{149} The Council Journal reports that the ordinance passed the Council unanimously on September 25,


\textsuperscript{147} Chicago Tribune, July 21, 1932, at 5; New York City, supra note 145, at 46; See also Complaint at 3, 10 United States v. Yellow Cab Co., No. 46 C#1359 (N.D. Ill. 1946); 332 U.S. 218 (1947).

\textsuperscript{148} Testimony of Yellow's President Benjamin Samuels, Hearings on the Reduction in the Number of Taxi Licenses, Chicago City Council Comm. on Local Transportation, July 1, 1929, at 74, 90.

\textsuperscript{149} Hearings on the Reduction in the Number of Taxi Licenses, Chicago City Council, Comm. on Local Transportation, July 1, 1929, at 29, 81.
1929. The papers made no mention of it, a fact of importance since some aldermen were later to claim that they had never heard of the ordinance. Interestingly enough, the Tribune of the 26th did report that an ordinance authorizing the construction of a sewer had almost been slipped by the Council, stopped only by an attentive alderman who detected the presence of the ordinance, not listed in the printed agenda, on the final oral reading. The Tribune was later to explain that the taxi ordinance had been hidden in an omnibus bill which was routinely passed at the end of the session.\(^{150}\) The ordinance was quickly challenged as unconstitutional, but upheld by both the state and federal courts.\(^{151}\) The Vehicle Commissioner denied all further applications for licenses since no applicant stood prepared to satisfy the burden of showing public convenience and necessity.\(^{152}\)

The entry ordinance was omitted from the Chicago Code of 1931, perhaps as a result of the irregular fashion in which the ordinance had originally been passed. The Council had passed the Code and had thus repealed the ordinance by implication, a situation it moved quickly to correct. The ordinance was again passed on April 14, 1932.

These events had aroused the interest of the press and unfavorable stories began to appear. On July 18, 1932, the Tribune ran a story under the headline “Chicago’s Taxi Rates Highest of Big U.S. Cities.” The next day the headline was “Taxi Monopoly Bill Revived,” a discussion of a proposal to limit the number of authorized licenses still further, to 4,600 and to raise the ordinance fares. Testimony before the Local Transportation Committee on July 20 did not quiet the furor, but only gave the Tribune an opportunity to discuss Yellow’s connection with the reported corruption in New York.\(^{153}\) Whatever substance there was to these attacks, they were sufficient to turn the Council around. On July 28, amid threats on the Council floor to reveal “some of Yellow’s Christmas presents”\(^{154}\) the entry limitation was repealed. Alderman Nelson, sponsor of the repealer, told the Tribune that he wished to do away with the limitation on the number of cabs in order to do away with the monopoly. The repeal was followed in September by an ordinance reducing the ordinance rate of fare to bring it more nearly in line

\(^{150}\) Chicago Tribune, Oct. 29, 1932, at 5.

\(^{151}\) People ex rel. Johns v. Thompson, 341 Ill. 166, 173 N.E. 137 (1930); Capital Taxicab v. Cermak, 60 F.2d 608 (N.D. Ill. 1932).

\(^{152}\) In New York Marklin’s program ran into serious difficulty. After a special commission appointed by Mayor Walker had recommended entry controls and praised the virtues of “unified” systems in its Report of Sept. 23, 1930, it was learned that Walker had accepted stock, including shares in the Parmalee Transportation Co., the parent of Chicago Yellow, in exchange for a promise to push for a limitation on the number of taxi licenses. Chicago Tribune, July 21, 1932, p. 5.

\(^{153}\) Chicago Tribune, July 21, 1932 at 5.

\(^{154}\) Chicago Tribune, Oct. 29, 1932 at 5.
with the actual going rate. The newspapers, having disposed of the monopoly, dropped the story.

The story, however, was not that simple. To judge by a contemporary memorandum written by Alderman Toman, the sponsor of the 1929 entry ordinance, the Public Vehicle Commission did not proceed to grant new licenses even though the ordinance had been repealed. In the memo, Alderman Toman noted that the Public Vehicle Commission had before it “several . . . applications . . . from companies proposing to operate large fleets of taxicabs in Chicago on a schedule of rates (15 cents and 5 cents) radically lower than any rates that had ever been in effect in Chicago.” Toman, summarizing testimony before a subcommittee of the Council, directed his arguments not to the dangers of entry but to the harm of fare competition, apparently because he still considered the entry problem taken care of. But Toman’s arguments were apparently unavailing, for in June of 1933 the Council cut the ordinance rate of fare again. The prevailing rate of fare went even lower, and Toman’s feared 5 cent per third of a mile rate became a reality. The 1933 fare reduction, however, was accompanied by an ordinance creating a new Public Vehicle License Commission and a resolution directing the Commission to investigate the desirable level of fares and the number of cabs. The Commission reported on April 25, 1934. It reported that with the close of the Century of Progress Exposition in November of 1933, taxicab operators were losing money. How did it know? By means of “reliable data as to cost of operations under normal conditions . . . available only from the books and records of Yellow Cab Company.” The Commission recommended that ordinance fares should be minimums, not maximums, to prevent fare competition, although it confessed that it could not determine the optimal level of fares. The Commission concluded that no new licenses should be issued and reported that “we have accordingly authorized the issuance of 4,108 taxicab licenses,” the number outstanding on December 31, 1933, and a number less than the number originally authorized by the limitation ordinance of 1929. The Commission did not explain the source of its legal authority to impose this limitation. However, a new ordinance incorporating the recommendations of the Commission was quickly drawn up and passed, the only objection from the newspapers being that a three-man commission was unnecessarily expensive. The Commission was obligingly reduced to a Commissioner, and the ordinance passed unanimously on May 18, 1934, imposing minimum fares and requiring a showing of public convenience and necessity by new applicants for licenses.

155 John Toman, supra note 79.
156 Chicago City Council Journal, April 27, 1934 at 2070.
How was a policy that was publicly discredited in the summer of 1932 adopted without noticeable dissent in the spring of 1934? The paramount factor must have been the course of national politics. By 1934 Franklin Roosevelt was in the White House and the National Recovery Act with its trickle down theory of prosperity was law. Under the authority of the Act, American industry was proceeding to cartelize itself by restricting output and raising prices.\textsuperscript{158} When national policy decreed the desirability of limiting the competition faced by industrial giants, then why should not the same thing be done for the Chicago taximan?\textsuperscript{159}

The truths of the N.R.A. were still apparent in Chicago in the spring of 1934. The Vehicle Commission, indeed, felt little need to support its conclusion that "competition among operators and drivers of taxicabs is injurious to the public service, tends to reduce the compensation of taxicab drivers below the minimum wage required for decent living and is a menace to the safety of passengers and pedestrians and vehicular travel upon the streets."\textsuperscript{160} The New York Commission, reporting in 1930, and Alderman Toman, writing in 1932, had considered it necessary to justify these conclusions at length. Their explication of the arguments makes them easier to evaluate.

The basic argument for entry control was the trickle down theory. Limiting competition by preventing new entry and imposing minimum fares would make operating a taxicab more profitable. These profits would then trickle down from the operators to the drivers, who would then find it easier to make an adequate living. As a result, drivers would be under less pressure and could drive fewer hours and more safely. No evidence was offered that taxicabs were in fact particularly unsafe and indeed the New York Commission concluded that, although involvement of taxicabs in accidents was disproportionate to their number, taxicabs were safer than other vehicles on a per mile driven basis.\textsuperscript{161}

The connection between operator and driver profits in the taxicab industry is intuitively obvious because of the institution of the percentage commission contract. But why should the commission rate stay the same when fares increase? If the compensation actually paid drivers was sufficient to attract drivers in the existing labor market, why should the operators pay more because they are making more? Indeed, if the number of operating cabs is reduced, why shouldn’t they pay less since their need for labor is reduced?

\textsuperscript{158} Ellis W. Hawley, The New Deal and the Problem of Monopoly, 36-7 (1966).
\textsuperscript{160} Chicago City Council Journal, April 27, 1934 at 2069-70.
\textsuperscript{161} New York City, supra note 145, at 12, 27.
There might be driver resistance to a move as visible as cutting the percentage commission. If the drivers were organized in an effective union they might be able to stop such changes or even to impose a higher rate. But taxi drivers in Chicago were not even unionized in 1934. The way to increase the compensation of drivers would be to limit not the number of taxicabs, but the number of drivers. The New York Commission recognized this argument but responded as follows:

[The] . . . excess of drivers licensed is an obstacle to the safe and efficient operation of the taxicab industry. It is an evil principally because it tends to take away from drivers all sense of security in their jobs or of the dignity and responsibility of their calling. But it is questionable whether it would be possible for outside authority to limit the number of drivers without at the same time curtailing the supply of drivers necessary to enable fleet operators to keep their cabs consistently in operation. Even today with the seeming oversupply of drivers the larger fleet operators assert that it is difficult to secure enough drivers to handle the cabs which they would keep on the streets during the weekends.\textsuperscript{162}

In other words, limitation of the number of drivers was not appropriate because it would interfere with the operator’s profits!

Two problems were stressed by Alderman Toman and the New York Commission to show the undesirability of unrestricted competition: financial responsibility and traffic congestion. Financial responsibility was the problem that had been relied on by Yellow in 1929. Alderman Toman wrote:

The records of cab companies show large numbers of injury claims, which far exceed the limit of insurance required under state law, which can only be taken care of through generous reserves set up for that purpose, and that the history of cut-rate operation in general has been that adequate claim reserves cannot be and are not set up; but on the contrary, that most cut-rate operations have only endured for the period of time during which it was possible to stave off payment of claims arising by contesting them in the courts and that when their claims were finally reduced to judgments the cut-rate companies went out of business, leaving behind their unpaid claims.\textsuperscript{163}

Because taxicabs are intensively operated, liabilities for damages to passengers and others are a significant part of their costs. Independent taxicabs in Chicago today pay insurance premiums of $1,500 per year,\textsuperscript{164} or about seven and one-half per cent of their gross revenues. Delay in litigation would make it possible to operate for a period of time without ever paying this significant

\textsuperscript{162}Id. at 18.
\textsuperscript{163}John Toman, supra note 79, at 7.
\textsuperscript{164}Revenue and expense data submitted to Public Vehicle Commission. See Table 3. Corroborated by interviews with licensees.
item of expense, if no insurance were required. If there is free entry, a single operator can simply abandon his bankrupt corporation and obtain a license for another. This device can be used in fields other than taxicabs and the common law has, too infrequently, “pierced the corporate veil” to deal with egregious cases. Entry regulation may inhibit use of the tactic because the operator cannot easily reenter the industry if the bankrupt corporation is the licensee. The ordinance of 1934 was apparently responsive to this problem, requiring that “Every licensee shall pay each judgment or award rendered against such licensee by any court or commission of competent jurisdiction within sixty days after such judgment or award shall become final and not appealable.” But the ordinance did not require that the licensee himself operate the vehicle nor did it impose liability upon the licensee for the actions of an independent contractor driver. Thus, at least in theory, a device remained open for avoiding liability by arranging for a succession of independent contractors to operate the cab.

Yellow’s concern for financial responsibility was itself brought into question in 1933 when it was alleged that Yellow followed the regular practice of removing its cases to federal court in order to take advantage of the greater delay then prevailing there to postpone settlement. Although Yellow as a large company with attachable assets could not take advantage of procedural delays to escape payment altogether, it could take advantage of the delay to capture the earnings on the capital during the period of delay. Checker, too, apparently did not behave in an exemplary fashion. Alderman Toman specifically named the DeLuxe Cab Company as one of the companies that had gone out of business with unpaid judgments. But DeLuxe, in 1929 the third largest cab company in Chicago with 400 licenses, was defunct because it had been purchased by Morris Markin (through Checker and Parmalee), who then proceeded to suspend its operations.

The problem of financial responsibility of Chicago cabs was, and is, attributable not to “competition” but to the failure to require reliable insurance

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165 “[A] corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.” United States v. Milwaukee Refrigerator Transit Co., 142 F. 247, 255 (E.D. Wis. 1905). For a recent leading case involving an unsuccessful effort to pierce the veil of a group of taxicabs operating companies, see Walkovszky v. Carlton, 18 N.Y.2d 414, 223 N.E.2d 6 (1966).

166 Chicago City Council Journal, May 18, 1934 at 2271-72.

167 Letters in Chicago Corporation Counsel’s Office, from Attorney William C. Napie to the Corporation Counsel (Sept. 16, 1933) and to Mayor Kelly (Sept. 7, 1933), citing articles on Yellow’s stalling tactics in the Herald Examiner.

168 Complaint at 14-15, United States v. Yellow Cab Co., No. 46 C #1339 (N.D. Ill. 1946); 332 U.S. 218 at 222 (1947).
coverage. Even in 1970, after entry had been barred for thirty years, when the right to do business was worth more than $15,000 and insurance was required by the ordinance, financial responsibility remained a problem among independent Chicago taxis. Illinois has, in the 1960's, seen the rise and too frequent fall of small, locally promoted automobile liability insurance companies. The fall of these companies has been in some cases accompanied by financial mismanagement and suspected embezzlement. It is tempting for promoters of such companies to pursue the same scheme as that once pursued by some small cab operators: to begin business; to live off the income stream thus generated; and to disappear before the judgment creditors discover that the company's assets are inadequate. Taxicabs are large-volume and, hence, attractive customers for such companies, and some independent cabs have carried insurance with companies that subsequently failed.

Both the New York Commission\textsuperscript{169} and Alderman Toman\textsuperscript{170} stressed the problem of cruising and its contribution to traffic congestion as a reason for the need to limit taxicabs. Both correctly pointed out that if the number of cabs declines, the remaining cabs will spend less time looking for business. This also means, of course, that customers will find it more difficult to obtain a cab. Traffic congestion caused by taxicabs has never been a city-wide problem. Rather, taxis tend to congregate at those places where business is available. But the drivers themselves have an incentive to avoid congestion if it slows them down. For over fifty years Chicago dealt with this problem by means of special rules regulating the flow of taxi traffic in high-density areas. If cruising creates traffic congestion on certain streets, it can be prohibited on those streets and carefully designed taxi stands created to handle the business. The only reported problem of traffic congestion attributable to public service autos in the city of Chicago that we have discovered occurred on South Parkway during the years 1948-1951. Large numbers of jitneys were operating on the street. They darted in and out of traffic as they moved to and from the curb loading and unloading passengers. The \textit{Sun Times} reported that South Park had the highest accident rate in the city.\textsuperscript{171} But the special problems on South Parkway may have resulted from, not in spite of, the regulation. During the postwar period South Park and some parallel streets apparently became a "free area" which unlicensed cabs could use as a base for illegal operations throughout the south side. The city had long failed to enforce the taximeter provisions of the 1934 ordinance in the area.\textsuperscript{172}

\textsuperscript{169} New York City, supra note 145, at 6, 20-26.
\textsuperscript{170} John Toman, supra note 79, at 6.
\textsuperscript{171} Chicago Sun Times, Sept. 12, 1951, p. 4.
forcement officials, having grown used to ignoring taximeter violations in the area, may have found it equally easy to ignore license violations. This differential enforcement created an artificial concentration of cabs on the Parkway.

The final factor stressed by Alderman Toman in support of reduced taxicab competition was the impact of low cost taxicab service on public transportation.\textsuperscript{173} Alderman Toman pointed out that mass transit systems operating under a uniform, city-wide single fare system rely heavily on profits from short haul riders who would be lost to low cost taxis. This is true. But should the short haul rider be forced to subsidize mass transit systems if cheaper, alternative methods of transportation are possible? And indeed, in the long run, the elimination of cheap, flexible short haul public transportation may simply force people to buy their own cars and to abandon public transportation altogether.

There is another factor, not mentioned by either the New York Commission or Alderman Toman, which has figured in the debate. From time to time advocates of restricted competition have hinted darkly that experience shows that unlimited competition in the industry leads to taxi wars. These taxi wars are large scale physical conflicts between drivers of rival companies. There were indeed such wars upon the streets of Chicago in 1922.\textsuperscript{174} The causes are difficult to unravel from the conflicting claims and charges reported in the contemporary press. The conflict appears to have been between Yellow on the one hand and Checker and the smaller companies on the other. Drivers (or more likely hired killers) for each group attempted and upon occasion succeeded in killing drivers for the other. Apparently Checker and the other companies were excluded from all loop cab stands under the provisions of an ordinance supposedly passed in 1920 requiring a license for the use of such stands. Such a requirement directly contradicts the ordinances as set out in the Code of 1922.\textsuperscript{175} The Tribune quotes Checker and the independents to the effect that they had attempted to pay the license fee but their checks had been returned. One possible explanation is that Yellow had attempted to achieve a taxi monopoly by obtaining exclusive access to loop stands with the cooperation of city officials and that Checker and the others took to violence as a remedy. It hardly seems an appropriate response to such thuggery to keep others out of the industry.

The entry ordinances of 1929 and 1934 went further than merely limiting entry by new applicants. The ordinances made the right to renew licenses

\textsuperscript{173} John Toman, \textit{supra} note 79, at 2-3.

\textsuperscript{174} For contemporary press accounts see the Chicago Tribune of June 10, 1921, at 1; June 12, 1921, at 11; June 15, 1921, at 5; June 7, 1921, at 11. The war was of grave concern to the City Council. See the 1921-1922 Journal at 373, 380 and 498. Among the remedies discussed was a $10,000 peace bond for all drivers.

\textsuperscript{175} Chicago Mun. Code, ch. 85 §§ 3974 (1922) (all licensed cabs may use public cab stands), 3982 (stated limitations on standing applicable to all cabs).
personal to the applicant.\textsuperscript{178} This guaranteed that those licenses in the hands of individuals would slowly decrease as the individuals died. In addition, the ordinances increased the burden of owning a taxicab license to discourage firms from simply holding on to their licenses until conditions improved. The 1929 ordinance required the license holder to “regularly and daily operate his or its licensed taxicabs during each day of the licensed year to the extent reasonably necessary to meet the public demand for such taxicab service,”\textsuperscript{177} and provided that upon abandonment of taxicab service for a period of ten consecutive days the license should be revoked. The ordinance of 1934 re-imposed this obligation, reducing the permissible period of abandonment, as well as imposing a $50 a year fee “as compensation for use of the streets.”\textsuperscript{178} Markin, however, was not content to wait for the natural course of events to reduce the number of licenses. He purchased control of DeLuxe Cab Co. and suspended its operations in 1932.\textsuperscript{179} In addition, Checker apparently abandoned 250 licenses and Yellow abandoned 169 licenses between 1929 and 1934. These actions suggest that Markin never doubted that no new licenses would be issued, for otherwise abandoning these licenses would have been the equivalent of transferring them to newcomers. By 1934 Markin had directly eliminated at least 889 licenses. The total number of licenses had declined from 5,289 to 4,108. The remaining licenses were apparently of sufficient value to justify the payment of the annual fee, at least to judge by the fact that the number of licenses outstanding remained constant for the next three years.

The outcome of Markin’s campaign for entry controls in Chicago must have been satisfactory to him. However, on March 7, 1937 there erupted a sudden and violent strike of the drivers. The companies denounced the strike leaders as Communists and undertook to operate in spite of the strike with some 600 drivers still reporting for work. On March 17th, St. Patrick’s Day, the striking drivers marched on the loop, attacking cabs, strike-breaking drivers and passengers.\textsuperscript{180} The strike was settled at the end of the month not by giving the drivers a raise but by an agreement that, if the City Council would approve a five cent increase in the flag pull charge, the company would raise the commission rate from 35 to 37 and one-half per cent, and if the Council would approve an even larger increase, the commission rate would go to 40 per cent.\textsuperscript{181}

\textsuperscript{178} Chicago City Council Journal, Sept. 25, 1929, at 1068.
\textsuperscript{177} Id.
\textsuperscript{178} Chicago City Council Journal, May 18, 1934, at 2271.
\textsuperscript{179} Complaint at 14-15, United States v. Yellow Cab Co., No. 46 C#1339 (N.D. Ill. 1946); 332 U.S. 218 (1947).
\textsuperscript{180} For one account see Rose v. City of Chicago, 317 Ill. App. 1, 10-21, 45 N.E.2d 717 (1942).
Once the strike was settled on this basis a series of strange events occurred. The strikers had had no national union affiliation. But in April the drivers were chartered as a Teamster’s local. The company then signed an agreement providing, not for a commission increase, but for union dues checkoff. A dominant figure in the strike had been a driver, Dominick Abatta, who became president of the local. He did not figure prominently, however, in the subsequent hearings before the City Council, when Teamster officials appeared to support the company in its request for a fare increase. Two years later he was purged as the local president and replaced by Joey Glimco.

The companies asked the Council for the five cent increase in the flag pull charge. But that is not all they asked for. Under an agreement signed between them in April, Checker and Yellow sought to have the number of licenses reduced from 4,108 to 3,000 on condition that those “turning in” their licenses would get a priority on any new licenses until 1945. The Council passed the five cent flag pull increase and the license reduction ordinance in December under the threat of another strike. The Tribune reported the passage of the ordinance with no evident disapproval, perhaps relieved that drivers would not riot in the loop again. The Daily News, however, interpreted events differently. In unusually sarcastic language, the News reported:

The new taxicab ordinance, a monument to the principles of collective bargaining and friendly cooperation, will be reported favorably to the City Council tomorrow by the local transportation committee . . . .

The ordinance, decided upon after months of weighty consideration, will increase the cost of a cab ride 5 cents and extend to the Yellow and Checker companies their monopoly of the streets until 1945. As their part of the bargain, the companies will remove from the streets 1,000 cabs, upon which they are now paying $75,000 a year in license fees.

Cab drivers have been promised a slight increase in wages when the increased rates become effective. They now receive 35 per cent of their gross bookings. They have been promised 37½ per cent. The earnings per ride will be increased also for the companies, who were put to heavy expense last winter fighting the drivers’ strike . . . .

The drive for increased taxi rates began after the 22-day strike last March. At the conclusion of that strike, when aldermen expressed the fear that “Communists” were leading the cab drivers, the International Brotherhood of Teamsters organized the drivers, and then went visiting the heads of the Checker and Yellow companies.

The International Brotherhood of Teamsters, on behalf of the cab drivers, won the checkoff, under which 50 cents a week is deducted from the drivers’ wages and turned over to the union officials into whose care the drivers had been committed. In addition to getting the checkoff, a signal victory for the rank and file of the drivers who have thus been enabled to contribute $10,000 a month dues

automatically, the representatives of the International Brotherhood of Teamsters won from the companies the promise of a wage increase if the public would pay for it.

Les Goudie, czar of the teamsters’ joint council, and William (Witt) Hanley, who had been delegated as “receiver” of the baby cab drivers’ union, appeared at the City Hall together with Benjamin Samuels, president of Yellow, and Michael Sokol, president of Checker.

The labor leaders informed the members of the transportation committee that they had looked over the books of the company and were satisfied that the companies had to have an increase in rates before they could pay drivers more than their average weekly wage of $12 to $14.

Without determining to their own satisfaction even if the spokesman of the men could read, members of the transportation committee took this plea as the foundation of their subsequent hearings.

There was some dissension in the cab drivers’ union, however, many of the rank and file protesting against the close collaboration between Hanley, Goudie, Samuels and Sokol. There were insistent demands that rates be lowered as the way to increase business, demands that the Checker-Yellow monopoly be broken up, demands that the processes of democracy be introduced in the cab drivers’ union.

The union leadership, however, soon established its responsibility. Between 30 and 50 “agitators” were kicked out of the union and out of employment. One rebel, a veteran cab driver, was shot. Others were beaten and slugged. When members of the rank and file attempted to hold a rump meeting at midnight on the near Northwest Side they were greeted by I.B.T. sluggers armed with baseball bats and hard salamis, and had their car windows broken.\(^\text{183}\)

The hearings before the Committee on Local Transportation had developed some interesting facts. The Commercial Cab Co. reported that it had 25 cabs, that it had always paid the union rate, and that it could use more licenses because of the volume of its business. The Peoples Taxi Co. proposed to operate cabs in Chicago at reduced rates with higher wages for drivers, reporting that under such a system in St. Louis drivers had made $40 a week instead of the $12 to $15 a week in Chicago.\(^\text{184}\) But the Committee apparently was not interested in the question of whether lower rates could help the drivers. The most troubling question about the proposed ordinance was how a decrease in the number of cabs by 1,000 could help the drivers. Would it not simply lead to 2,000 unemployed drivers? The question came up, and Sokol of Checker had an answer. He said that reducing the number of cabs to 3,000 would not require laying off any drivers because—even in the depths of the depression—there had always been a shortage of drivers!\(^\text{185}\) But if that was

\(^{185}\) Id. at 100.
so then some cabs were not being operated and were therefore subject to revocation under the ordinance.

The not-too-subtle suggestion of the *Daily News* in 1937 that the teamster union leaders were more interested in bettering their own position through close cooperation with Checker and Yellow was later to be supported by testimony before the McClellan Committee that union officers were forced to kick back most of their union salaries to Glimco and that the companies had kept part of the checkoff to cover their "bookkeeping expenses." In the early 1960's, when Abatta challenged the Teamsters in a representation election as President of a competing union, the value of representing the drivers was suggested by the violence used, unsuccessfully, to fend off the attack. The drivers' union has never seemed able to deliver for the drivers. There has been a persistent shortage of drivers, apparently because the union negotiated contract is not sufficiently high to attract more drivers than the companies require. The companies' continuous advertising for drivers seems to indicate that there is no surplus of applicants.

The priority provisions of the 1937 ordinance became effective when Checker surrendered 500 licenses, Yellow surrendered 571 and other licensees surrendered 37. The ordinance formally recognized that the licenses had been transformed from mere permits to carry on a business into valuable property rights by providing that both the licenses and the right to apply for a license were assignable.

The privileged legal position which Markin had won for Checker and Yellow came under renewed attack after World War II. The shortage of private passenger cars caused a marked increase in the demand for taxicab service. Returning veterans mounted a nationwide campaign to obtain taxicab licenses and enter the business. In Chicago the legal barriers to entry collapsed as hundreds of unlicensed operators took to the street. Checker and Yellow, attempting to assert their rights under the ordinance, found themselves again attacked as monopolists. The U.S. Department of Justice filed a case charging Checker and Yellow with violations of the Sherman Antitrust Act. In response to this new crisis, Checker, Yellow and the city followed a strategy which at least in retrospect seems to have been brilliantly designed to preserve Checker and Yellow's position while appearing to yield to the demands of the veterans.

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188 See, e.g., Chicago Tribune, April 25, 1962, at 1; Chicago Sun Times, April 17, 1962, at 1; Chicago Daily News, May 6, 1962, at 3.

189 *Chicago Sun*, July 26, 1946; at 1; *New York Times*, July 26, 1946, at 1.
The city could have issued the licenses on which Checker and Yellow had priority and then issued additional licenses to the veterans. The only possible objection to this course of action would have been that the facts would not support the finding of "public convenience and necessity" required for the issuance of additional licenses under the ordinance. But with a thousand to two thousand cabs operating illegally yet successfully on the streets of the city, such an objection would appear to have been unsupportable. This course of action was not merely a theoretical possibility. It was one the city almost followed. On February 5, 1947 the Council passed an ordinance declaring that "the demand for taxicab service is in excess of three thousand taxicabs" and authorizing the Commissioner "to issue not-to-exceed five thousand five hundred taxicab licenses." The 2,500 licenses thus authorized would have enabled the city to honor the 1937 ordinance priorities with 1,429 licenses left over for veterans. Yellow and Checker vigorously objected to the ordinance. Sokol of Checker was quoted in the Daily News as explaining:

Without any curb on their numbers, we just couldn't make it pay. Many of the drivers (in the 1930's) flopped, leaving millions in unpaid judgments to widows and orphans bereaved by fatal accidents... In 1937 the drivers themselves asked for a reduction in the number to 3,000.

On July 14th the Commissioner reported to the City Council his view as to the number of licenses that should be issued. He found that the large number of illegal cabs on the streets of the city showed the need for additional cabs, but that conditions were too exceptional to make any durable prediction of the city's need for cabs possible. Therefore, he recommended that all the illegal cabs then operating be licensed on a temporary basis until the return of more normal conditions. Significantly, he did not recommend that the priorities of the 1937 ordinance be honored.

The possibility of a temporary license had first been mentioned by the Circuit Court of Cook County in a 1946 decision enjoining the city from issuing 250 licenses to veterans in an initial postwar burst of patriotic gratitude. In response to proof that Checker and Yellow were not operating all of their licenses due to their inability to obtain replacement vehicles, the Circuit Court had allowed the city to issue enough temporary licenses to bring the number of operating licensed cabs up to 3,000. The city seized upon the plausible legality thus created for temporary licenses to accommodate

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193 Sustained by the Illinois Supreme Court in Yellow Cab Co. v. City of Chicago, 396 Ill. 388, 71 N.E.2d 652 (1947).
the veterans but issued them in numbers and on terms in clear violation of the decision. For instance, the 950 temporary licenses finally issued pursuant to the Commissioner's 1947 report were not based on the number of inoperative licensed cabs but on the number of unlicensed cabs and was apparently far in excess of the number required to bring the number of operating licensed cabs up to 3,000. These "temporary" licenses were renewable indefinitely, subject only to further action of the Council and the requirement that they could not be transferred.

A special requirement that all temporarily licensed cabs had to be driven personally by their owner, later eased to permit operation by a relief driver on a second eight-hour shift, was imposed to make them less attractive to operate. The taxi ordinance was amended to provide that all taxis could carry only the name of the licensee. Since the "temporary" licenses could be issued only to individuals, and were not transferable, this made collective promotion and advertising of temporarily licensed cabs impossible. In 1949 the Seventh Circuit Court of Appeals in an action brought by a group of the veteran licensees held these provisions to be unconstitutional because they treated the veterans differently than were the regular licensees without any reasonable basis for the distinction.

In spite of this setback, Checker and Yellow had by 1949 obtained a position which would inevitably reestablish their dominant position without need for the politically unacceptable spectacle of forcibly removing honest, hardworking, independent businessmen veterans from the city streets. In 1947 the Illinois Supreme Court had affirmed the Circuit Court injunction against the issuance of regular licenses to the veterans, establishing in clear language the invalidity of licenses issued in violation of the priorities conferred under the 1937 ordinance. The device of the temporary license, while not creating any legal rights in the licensee, had the advantage of creating an apparent distinction between the veterans and any additional newcomers. Completely unlicensed cabs could now be excluded from the streets. Over time, the number of veteran licenses would decline as the licensed individuals left the business or died—an inevitable process that was only slowed by the Seventh Circuit's invalidation of the special burdens imposed on temporary licenses. To further solidify its position, Checker and Yellow brought suit in Federal Court against the city for damages in an amount exceeding 3 million dollars for failure to comply with the provisions of the 1937 ordinance. In 1951 the Seventh Circuit reversed a decision of the Federal District Court.

194 Chicago City Council Journal, Feb. 6, 1948, at 1919.
195 Eastman v. Yellow Cab Co. 173 F.2d 874 (7th Cir. 1949).
196 Yellow Cab Co. v. City of Chicago, 396 Ill. 388, 71 N.E.2d 652 (1947).
dismissing the complaint; but deferred action on the case until the Illinois Courts could determine whether the city was protected by the doctrine of sovereign immunity. If Checker and Yellow were to press the suit too hard the city might respond by honoring their priorities. But the pendency of the suit was to prove a useful additional bargaining lever.

The initiative fell to other parties. Checker and Yellow had since 1946 been successfully defending an antitrust case brought by the United States Government. In announcing the suit, the Attorney General said: “One purpose of the suit is the dissolution of the cab-operating monopoly in Chicago so as to permit others, including veterans, an opportunity to engage in such business.” The heart of the government’s complaint was that Checker and Yellow had conspired to monopolize the taxicab business in the City of Chicago by purchasing licenses and withholding cabs from service. That was true enough, but the action failed because of a holding by the United States Supreme Court that the Chicago taxicab business was not in interstate commerce. Two counts of the complaint peripheral to the monopoly in Chicago—that Checker Motors had monopolized the market for taxis through control of customer taxi companies and that Chicago Checker and Yellow had conspired with Parmalee to monopolize the interstate rail passenger transfer business in Chicago—were upheld but ultimately failed for want of proof.

The principal forum remained the City Council. The first issue that had to be faced was whether the term of the licenses outstanding under the 1934 ordinance would be extended beyond 1950. The 1934 ordinance had provided for a license term through 1940. In 1937 the term was extended to 1945; in 1945 it was extended to 1950 in exchange for a promise that Checker and Yellow would spend “millions” of dollars to replace their fleet of obsolete vehicles. Further complicating the problem was the Seventh Circuit decision invalidating the special requirements imposed on the veteran licensees. Checker and Yellow asked for a continuation of the existing situation, arguing that a ten year extension of the 1934 ordinance was justified because they had honored the ordinance while the city had breached it by permitting unlicensed vehicles to operate. The veterans sought to strengthen their precarious position by having their licenses made assignable. Two independent associations, American United and Flash, argued that Chicago needed 4,500 licenses, reporting that they had an insufficient number of taxis to satisfy the calls for service. During the years 1950 and 1951 the term of

197 Yellow Cab Co. v. City of Chicago, 186 F.2d 946 (7th Cir. 1951).
the 1934 ordinance was extended four times, always subject to the rights of the 950 temporary licensees, while the Committee on Local Transportation considered the problem.

The solution adopted by the Council on December 20, 1951 was in form an entirely new ordinance ending the term of the 1934 ordinance.\textsuperscript{201} In substance it continued the existing situation, even increasing the constraints on competition by extending the barriers to entry to the previously immune liversies. The ordinance made all outstanding licenses, including the veteran licenses, renewable from year to year but ominously and ambiguously provided that any ordinance increasing the number of licenses “shall conform with the provisions of any subsisting franchise or contract ordinance governing the subject.” Checker, Yellow, the liversies and the veterans were put on an equal basis not by making the veteran licenses assignable, but by making all licenses unassignable. The ordinance also barred the leasing of any licensed taxicab, a provision which saved the long-standing arrangement by which Checker Taxi leased its licenses (but not cabs) to Cab Sales. The ordinance also required public liability insurance of all licenses and prohibited group riding, a provision designed to spread the available business and strengthen the city's hand against the spread of then pesky jitneys. Feeling in the Council on jitneys was mixed. An ordinance to legalize their operations in certain “high density” zones failed two months later by a tie vote—in part because of doubts about the legality of recognizing in the ordinance what was in fact the city's practice.\textsuperscript{202}

The ordinance precipitated an unprecedented event. In January, three of the eighteen members of the Committee on Local Transportation dissented from a report of the Committee recommending certain technical changes in the ordinance. The dissenting alderman said:

[I]t is to be noted that at no time during the entire course of a year and a half during which this problem was under consideration by the Committee and its Sub-Committee was a case made out for the need of a monopoly in the taxicab business in order to insure adequate city wide service at reasonable profit to the licensees. In fact, much evidence was presented to demonstrate the wholesome benefit to the public of a healthy competition between the large companies and the independent operators. . . . It is illogical to prescribe a certain number of cabs as being needed to service the public in Chicago (the number then outstanding) and then. . . . provide automatically for a decrease in such number as licenses are cancelled, revoked or lapsed.\textsuperscript{203}

\textsuperscript{201} Chicago City Council Journal, Dec. 20, 1951, at 1596-1601.
\textsuperscript{202} Chicago Tribune, Jan. 31, 1952, at 3.
\textsuperscript{203} Chicago City Council Journal, Jan. 17, 1952, at 1833. More surprisingly, the minority prevailed in a preliminary vote to raise the proposed number of licenses from 3761 to 4500. But in a session marked by confusion, the Council voted to reconsider the amendment and ultimately rejected it.
The *Sun Times* in an editorial noted that “the squeeze is back on the vet taxi owners” and denounced “the aldermen [who] want to make this a monopoly cab town in which the public will have to take whatever kind of service Yellow-Checker deign to give—or lump it.” There is a provision (in the ordinance), said the *Sun Times*, “that whenever vet licenses are surrendered, revoked, or cancelled by death, they cannot be reissued at all until after a public hearing. This could mean that over a period of time the total number of cabs on Chicago’s streets would be reduced.”

In response to these criticisms the ordinance was revised. Taxi licenses held by an individual were made transferable in the event of the owner’s death or military service. The hapless livery licensees were not included in this provision, thus assuring their eventual attrition. They unsuccessfully contested the legality of their sudden plight in the courts. The Appellate division upheld the power of the city to make individually held taxi licenses partially assignable but no livery licenses assignable. The reference in the ordinance to a “subsisting franchise or contract ordinance” was deleted. The requirement of a finding of public convenience and necessity was no longer imposed for the issuance of all licenses but only for licenses in excess of 3,761—the number then outstanding—apparently preventing the inevitable attrition in the number of taxi licenses. These changes mollified the critics. They were to make little difference in fact.

The ordinance failed to specify who, if anyone, would be entitled to any licenses that became available through revocation or failure to renew any of the 3,761 authorized. That issue was taken to the courts two years later when a group of independents filed a petition for a writ of mandamus in the Circuit Court of Cook to compel the Commissioner of Public Vehicles to issue licenses to them. The petitioners alleged that they had filed applications with the Commissioner satisfying the requirements of the ordinance, that there were 19 unissued licenses under the ordinance, and that it was the duty of the Commissioner to issue the licenses to them. The Commissioner answered that under the ordinance it was not mandatory for him to issue 3,761 li-

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204 Chicago Sun Times, Jan. 24, 1952, editorial.
207 On the same day, the Council passed a contract ordinance—subject to approval of 50% of the licensees—which would have guaranteed Checker and Yellow their proportional share of any new licenses if they released the City from damage claims arising under the 1934 Ordinance and accepted the validity of the 761 veterans licenses then outstanding. Yellow and Checker rejected the contract but the ordinance foreshadowed one aspect of the settlement in 1963. Chicago City Council Journal, Jan. 30, 1952, at 1925-27. See, also, Chicago Tribune, March 11, 1952, at 1; Chicago Tribune (Jan. 31, 1952, at 3.
licenses. The trial court rejected the Commissioner's contention and ordered the writ of mandamus to issue, whereupon Checker and Yellow petitioned to intervene. The Court's order, said Checker and Yellow, was in violation of its own but long forgotten injunction issued in 1946 barring the city from issuing licenses in excess of 3,000 without honoring the priorities of the 1937 ordinance. The trial court agreed. The Appellate Court reversed, holding that the injunction had expired with the failure of the City Council to extend the 1934 ordinance beyond 1951. The case then came to the Illinois Supreme Court.\(^{\text{208}}\)

The arguments in the case centered on whether the promise of the city of Chicago to recognize the priorities conferred by the 1937 ordinance extended beyond the term of the 1934 ordinance. The section of the 1937 ordinance conferring the priority made no mention of a time limit. A separate section had provided, however, that "the permission and authority granted to the licensees under said ordinance of May 18, 1934, to operate taxicabs upon the public streets and other public ways within the corporate limits of the city is hereby extended to December 31, 1945, unless sooner terminated or revoked as provided in said ordinance of May 18, 1934."\(^{\text{209}}\) The literal purpose of this section was not to limit the priority rights, but to protect the licenses until that date from a further reduction in the number of their licenses. However, courts have been hesitant to hold promises creating private rights perpetually binding on governmental bodies. The reason for such hesitance is obvious—a perpetual promise enables the authorities in power to create rights in private parties for nominal consideration which can be later changed only by exercise of the power of condemnation. The 1937 contract ordinance is, if one is needed, a perfect example of the reason for such an approach. The opinions of the Illinois Supreme Court, however, ignored this. Noting that "in construing many cases involving contracts created by the acts of municipalities, Illinois courts have applied the standard rules of construction," the Court said the "question [was one] of determining the contractual intent evinced by the city and accepting licensees."\(^{\text{210}}\) The five Illinois cases cited by the Court in support of this proposition were irrelevant to the problem at hand. Four of the cases cited by the Court involved actions for money due for work already performed under construction contracts.\(^{\text{211}}\) The fifth involved


an action for rent due under a lease. 212 None of these cases involved the question whether the governmental unit involved had created a perpetual private right. The court chose to ignore a precedent more nearly in point which had construed a franchise to operate a toll road as limited in time because of "the familiar rule of construction applicable to grants to private corporations ... that they are to be construed liberally in favor of the public, and strictly against the corporation." 213 Three Justices of the Court dissented.

Unmentioned was the calculating way Checker and Yellow had utilized their priority rights under the 1937 ordinance. Checker and Yellow had not sought to have those rights recognized by the city. They had not applied for any of the 1,083 licenses on which they had priority. Indeed, they had repeatedly opposed any increase in the number of licenses over 3,000 before the City Council. Their only interest in their priority rights was to use them as a lever to bar permanent entry by others into the industry. To this end, Checker and Yellow had made no effort to enforce the 1946 injunction prior to Hafner. This failure to make any effort to assure compliance with the order of the Court became remarkable when, in Hafner v. Flynn, it was brought to the Court's attention that the city had issued 761 licenses in violation of the injunction. Checker and Yellow, however, asked the Court to give the injunction effect only as to 18 of those licenses. The conduct of Checker and Yellow subsequent to the 1946 injunction could have presented substantial issues as to whether or not they had forfeited their rights. 214 No such question was raised before the courts.

Hafner v. Flynn, decided by the Supreme Court in April of 1958 and reaffirmed on rehearing in May, precipitated a new crisis over the ordinance. Yellow demanded that the city remove the veterans from the streets and in December instituted contempt proceedings against the city. 215 The change in strategy may have been at least in part dictated by legal considerations. Yellow and Checker had now waited 12 years to enforce their rights and at some point the courts would notice and apply doctrines of estoppel, laches and mitigation of damages to undercut Yellow and Checker's legal position. Then too, Checker and Yellow could not look forward to any further substantial attribution in the number of veterans licenses. Between 1952 and 1958 only the 19 licenses in issue in the Hafner case had been retired. The assignability at death provision added to the revised ordinance of 1952 was

212 City of Chicago v. Peck, 196 Ill. 260, 63 N.E. 711 (1902).
213 St. Clair County Turnpike v. People ex rel Bowman, 82 Ill. 174, 177 (1876).
OPERATING TO PREVENT ATTITUION. BUT PERHAPS MOST IMPORTANTLY, CHECKER AND YELLOW WERE IN A STRONG POSITION IN THE CITY COUNCIL. ALDERMEN SHERIDAN AND KEANE, POWERFUL FIGURES IN THE COUNCIL, HAD IN 1957, EVEN BEFORE THE SUPREME COURT DECISION, INDICATED THAT THE NUMBER OF VETERAN CAB LICENSES SHOULD BE REDUCED.

CHECKER AND YELLOW HAD ALREADY PRODUCED STRONG EVIDENCE OF THEIR INFLUENCE IN THE CITY COUNCIL IN 1955 WHEN THE RAILROADS SERVING CHICAGO DECIDED TO PUT THE PASSENGER TRANSFER SERVICE UP FOR COMPETITIVE BIDDING. THIS SERVICE HAD PREVIOUSLY BEEN PERFORMED BY PARMELEE, PARENT OF CHICAGO YELLOW, UNDER AGREEMENTS TERMINABLE AT WILL WITH EACH OF THE INDIVIDUAL RAILROADS SERVING THE CITY. IN JUNE OF 1955 THE RAILROADS JOINTLY AGREED TO GIVE A FIVE YEAR FRANCHISE TO THE NEWLY ORGANIZED RAILROAD TRANSFER SERVICE. ALTHOUGH PARMELEE’S BID HAD BEEN SLIGHTLY LOWER, RAILROAD TRANSFER OFFERED TO UPGRADE THE QUALITY OF SERVICE, AN IMPORTANT CONSIDERATION FOR THE RAILROADS WHO WERE FACING INTENSIFYING COMPETITION FROM THE AIRLINES. THE CITY COUNCIL, APPARENTLY INDIGNANT, IMMEDIATELY PASSED AN ORDINANCE REQUIRING NEW APPLICANTS FOR TERMINAL VEHICLE LICENSES TO SHOW PUBLIC CONVENIENCE AND NECESSITY.\textsuperscript{216} PARMELEE, UNLIKE RAILROAD TRANSFER, HAD ALREADY BEEN LICENSED. RAILROAD TRANSFER CHALLENGED THE ORDINANCE AS AN UNCONSTITUTIONAL BURDEN ON INTERSTATE COMMERCE, ULTIMATELY WINNING IN THE UNITED STATES SUPREME COURT IN 1958.\textsuperscript{217} THE CITY THEN ATTEMPTED TO APPLY OTHER PROVISIONS OF THE ORDINANCE TO RAILROAD TRANSFER, A MOVE RAILROAD TRANSFER AGAIN CONTESTED AND ULTIMATELY WON IN THE UNITED STATES SUPREME COURT IN 1967.\textsuperscript{218} PARMELEE WAS NOT CONTENT TO LEAVE TO THE CITY THE ENTIRE BURDEN OF DISCOMFORTING RAILROAD TRANSFER. IN 1956 IT BROUGHT A PRIVATE ANTITRUST SUIT AGAINST RAILROAD TRANSFER, ITS OWNER JOHN KEESSHIN, THE SIX RAILROADS WHO MADE THE DECISION IN FAVOR OF RAILROAD TRANSFER, THE PRESIDENTS OF SOME OF THOSE RAILROADS AND AN I.C.C. COMMISSIONER INVOLVED IN THE DECISION, FOR $19,000,000. THE THEORY OF PARMELEE’S CLAIM WAS THAT THE AWARD OF THE FRANCHISE BY A “CORRUPT CONSPIRACY” HAD DESTROYED A COMPETITIVE MARKET FORMERLY OPEN TO ANY PERSON WILLING AND ABLE TO PERFORM TRANSFER SERVICES! THE JURY DECided AGAINST PARMELEE AND THE VERDICT WAS AFFIRMED ON APPEAL.\textsuperscript{219} THE VICTORY WAS A PYRRHIC ONE FOR RAILROAD TRANSFER. WHILE IT WAS SUCCESSFULLY DEFENDING ITS POSITION IN THE RAPIDLY DECLINING RAILROAD PASSENGER TRANSFER BUSINESS, PARMELEE, THROUGH ANOTHER SUBSIDIARY, CONTINENTAL TRANSPORTATION CO., WAS OBTAINING WHAT NOW APPEARS TO BE A LEGALLY IMPREGNABLE MONOPOLY FROM THE

\textsuperscript{216} CHICAGO CITY COUNCIL JOURNAL, JULY 26, 1955, AT 897.
\textsuperscript{217} CHICAGO V. ATCHISON, T. & S.F.R. CO., 357 U.S. 77 (1958).
\textsuperscript{218} RAILROAD TRANSFER SERVICE V. CHICAGO, 386 U.S. 351 (1967).
\textsuperscript{219} PARMELEE TRANSPORTATION CO. V. KEESSHIN, 292 F.2D 794 (7TH CIR. 1961).
Illinois Commerce Commission to provide direct bus service to burgeoning O'Hare Field.\textsuperscript{220}

In spite of Checker and Yellow's proven power, Mayor Daley announced himself as a defender of the veteran cabs. The day after the Supreme Court's affirmance on rehearing in "Hafner," he said that he would do "all I can to protect the rights of veteran cabs operating in the city without violating the rulings of the Supreme Court." Daley said that he believed that the court would give the city time to work out its "complex" taxi problem. In response to Yellow's demand that the veterans be removed from the street, he wrote: "I ask that everybody be patient . . . and that the veteran cabs be allowed to continue operation until this question is resolved.\textsuperscript{221}

This the city did, although no formal licenses were issued to the veterans during the years 1958 and 1959, perhaps to improve the city's position in a contempt proceeding. The Annual Report of the Vehicle Commissioner for those years reports, however, that the city did collect a "taxicab operating fee" from each veteran equal to the taxicab license fee set by the ordinance. The Mayor directed the Public Vehicle Commission to hold hearings to ascertain how many licenses should be issued. At the hearing the parties reiterated their longstanding positions. The independent associations favored an increase in the number of licenses to about 5,500,\textsuperscript{222} a number sufficient to honor the 1937 priorities and permit some expansion by the independents. Checker and Yellow sought a reduction in the number of licenses to 3,000.\textsuperscript{223} A transit engineer imported from Philadelphia for the occasion correctly pointed out that granting additional licenses would take business from the Chicago Transit Authority and warned darkly that the increased competition would lead drivers into "illegal and immoral activities" and lessen driver interest in safety. The only new voice was a report of the Transportation Center of Northwestern University,\textsuperscript{224} completed the previous March, pointing out in essence that other cities had more cabs and lower fares, and did not seem to suffer for it. The Northwestern study, indeed, recommended that the city abandon entry controls altogether, a suggestion greeted by all other parties with derision. The independents testified that free entry would result

\textsuperscript{220} Continental, too, has enjoyed success in using the courts to protect its monopoly. By applying a "first in the field" doctrine, the Illinois courts have protected Continental from competition even in Chicago suburbs where it holds no franchise. Continental Air Transport Co. v. Illinois Commerce Comm'n, 38 Ill. 2d 563, 322 N.E.2d 728 (1967) and People ex rel. Continental Air Transport Co. v. Strouse, 41 Ill. 2d 567, 244 N.E.2d 171 (1969).

\textsuperscript{221} Chicago Sun Times, May 27, 1957, at 3.

\textsuperscript{222} Chicago Daily News, Aug. 13, 1958, at 12.

\textsuperscript{223} Chicago Sun Times, Jan. 10, 1959, at 5.

\textsuperscript{224} Northwestern Univ., Transportation Center, supra note 4.
in cutthroat competition, a reduced caliber of drivers, soaring insurance rates, and increased accidents. Samuels, representing Yellow, moved that the report be stricken from the record of the hearing. The Vehicle Commissioner, having been informed by 3,907 pages of such testimony, recommended a total of 4,600 licenses.

This number enabled the city to honor the 1937 priorities and grant licenses to 504 of the 740 veterans then operating. Checker and Yellow opposed the recommendation vigorously. Alderman Sperling charged that adoption of the 4,600 figure could lead to "chaos and even warfare in the Chicago taxicab industry." Mayor Daley, now a defender of only two-thirds of the veterans, insisted on the 4,600 figure and against the reported opposition of many alderman who desired a lower number it was adopted by a vote of 40 to 3.

This left the Vehicle Commissioner with the problem of reducing the number of veterans from 740 to 504. Apparently taking the position that since all of the veteran licenses were illegal none could complain if they were eliminated, he announced criteria of blatant unconstitutionality. First to go would be those licenses held by 25 or so city employees, apparently on the theory that those who were recipients of city largesse were not in a position to complain. Next to go would be those licensees living out of the city, apparently on the theory that they did not vote in the city. Finally, those licensees who had leased their cabs to one of the independent associations in violation of the 1952 ordinance would be eliminated, even though the provision was of questionable legality, had not been enforced, and did not specifically provide for revocation as a penalty. The priorities conferred by the 1937 ordinance had finally been honored. Only 504 of the some three thousand independents who entered the industry after World War II had obtained permanent status under the ordinance. Nevertheless, Checker and Yellow unsuccessfully challenged the new ordinance in court.

But even as Checker and Yellow's thirteen year battle against the veterans came to a close, a new threat appeared: the suburban cab. The operation of suburban cabs in Chicago has always been an aspect of the industry. In 1939 the problem of Evanston "five cent" cabs operating in northern Chicago be-

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229 On the ground that the hearing held on the issuance of additional licenses did not comply with the 1937 ordinance because there had not been complete cross examination and detailed findings of fact. Checker and Yellow did successfully argue that the provision permitting the assignment of individually owned licenses at death discriminated against corporate owners. The court struck down all restrictions on assignment. Yellow Cab Co. v. City of Chicago, 23 Ill. 2d 453, 178 N.E.2d 330 (1961).
came so serious that the then Corporation Counsel threatened to go to court for an injunction against their operations, observing that the court calendar was clogged with ordinance violation cases and that the maximum fine was only $200.00. Suburban cabs still operate in the city. Each year the Annual Report of the Public Vehicle Commissioner states that a small number of suburban cab drivers have been arrested and warned against further violation of the ordinance, noting that “no further action could be taken against these individuals since they were not licensed by this Commission.” On the far southwest side taxi service is apparently provided substantially by suburban cabs.

The issue which precipitated the new crisis was far more important than whether or not the suburban cabs could nibble at the edge of the Chicago taxi market. With the opening of O’Hare airport in 1959 the lucrative airport to loop business began moving from the older Midway airport. Midway is located well within the city limits of Chicago but O’Hare is located on an artificial peninsula of land sticking far out into the suburbs northwest of the city. Until a substantial number of flights started operating at O’Hare the Chicago taxi drivers did not want to drive out to O’Hare, particularly since they were unable to go into the surrounding communities for alternative business. To fill the gap, the city permitted a number of “suburban” cabs to operate at O’Hare—although some of the cabs were apparently licensed by no one. As business increased at O’Hare the problems increased. When Chicago cabs were hailed by a passenger going to a suburb they would either refuse to carry him or demand a fare in excess of the meter rate. Worse, some Chicago cabs would haul an unsuspecting suburban passenger to his destination without activating the meter and then demand an exhorbitant fare. Since the taxi ordinance did not apply to carriage out of the city, these were not ordinance violations. Conversely, the suburban cabs would refuse to carry loop bound passengers, or would carry them and thus trespass on the market.

230 Chicago Tribune, Aug. 30, 1939. The situation has persisted. In 1961 the Sun Times reported complaints of taxi firms that the Municipal Court was too easy on suburban cab drivers, that the suburban drivers hinder enforcement by demanding a jury trial, and that of 50 court cases in one week, only two drivers were given the maximum $50 fine. Chicago Sun Times, Mar. 3, 1961.

231 In 1968 there were 160 such arrests; in 1970, 106. Public Vehicle Commission Annual Report. It is not exactly clear what this passage means. Chicago Mun. Code, § 28-32 of the present ordinance prescribes a fine of $5-$100 for violating the ordinance. Illegal cab drivers are criminally prosecuted, Chicago Tribune, Feb. 23, 1964, § 7, at 21, and suburban cab drivers have been prosecuted in the past. The statement probably means that the Commission cannot revoke suburban cab drivers' chauffeurs' licenses or medallions since they have neither.


TABLE 5

Rates of Fare in the 1960's

<table>
<thead>
<tr>
<th></th>
<th>Pre-1965 Increase</th>
<th>1965-1969</th>
<th>1969-Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flag Pull</td>
<td>40¢ 1st 1/4 mile</td>
<td>40¢ 1st 1/5 mile</td>
<td>40¢ 1st 1/5 mile</td>
</tr>
<tr>
<td>Additional Mileage</td>
<td>10¢ each 2 minutes</td>
<td>10¢ per 1/3 mile</td>
<td>10¢ per 2/7 mile</td>
</tr>
<tr>
<td>Additional Passenger</td>
<td>20¢ per passenger</td>
<td>20¢ per passenger</td>
<td>20¢ per passenger</td>
</tr>
<tr>
<td>Waiting time</td>
<td>10¢ each 2 minutes</td>
<td>10¢ each 2 minutes</td>
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of the city licensees.\textsuperscript{234} It became a threat to Checker and Yellow's whole position when complaints about the situation increased. The Daily News\textsuperscript{235} and the Sun Times\textsuperscript{236} sensibly suggested in February of 1962 that the problem could be solved by metropolitan licensing of taxicabs, permitting all qualified operators to carry passengers anywhere within the metropolitan area. This would have moved control over the number of licenses out of the city and reopened the whole entry question. A solution was quickly proposed. Chicago cabs would carry passengers to the suburbs at a rate equal to one and a half times the meter rate. The additional half would compensate the drivers and the companies for the dead haul back to the city limits. Suburban cabs would be excluded from the airport except where the passenger had made advance arrangements with the suburban company to be picked up. An ordinance to this effect was passed in March of 1962\textsuperscript{237} and, upon challenge by the operators thus excluded, upheld by the Illinois Supreme Court in June.\textsuperscript{238} The essence of their complaint was that the city had long tolerated, if not sought, their service when Chicago cabs were unavailable even though it violated the ordinance. Now, just when the business had become attractive, they were to be sent packing. But the equity of their position in fact was not sufficient to invalidate the ordinance on its face. The city's solution to the O'Hare problem has in practice been less than satisfactory—the rates to the suburbs are high and the Chicago drivers often get lost there. But the position of the Chicago licenses was protected.

Suburban operators made one more effort to challenge the city. Prior to 1959 the ordinance section dealing with the operation of suburban cabs in

\textsuperscript{235} Chicago Daily News, Feb. 8, 1962, editorial.
\textsuperscript{236} Chicago Sun Times, Feb. 28, 1962, editorial.
the city had banned only solicitation of passengers within the city. In 1959 this section was amended to bar transportation of passengers from any point within the city. In *Chicago v. Vokes*\(^{239}\) drivers for Evanston Cab Co. and Skokie Red Top Cab Co. appealed their convictions under this section to the Illinois Supreme Court. Each of the drivers had entered the city to pick up a passenger who had called the company for a cab. The drivers picked up the passenger as requested and delivered him to another point within the city. They were then arrested for violation of the ordinance and convicted. On appeal the drivers argued that the ordinance was unconstitutional because it required licensed corporations to have their office within the city limits, a contention the Court easily dismissed. They did not argue that the city's flat prohibition of any new licenses for such livery type service was unconstitutional.

The damage suit which Checker and Yellow had brought against the city in the late 1940's for breach of the 1937 contract ordinance was still pending in 1963. The damage claim had increased from $3,000,000 to $14,000,000. By 1957 it was clear that Checker and Yellow sought to settle the lawsuit. An internal memorandum written to the Corporation Counsel in 1957 began: "Checker-Yellow demand a long term contract to get virtual control of the city's power to regulate the use of city streets for operation of taxicabs." The memorandum proceeded to note that "not even Checker-Yellow have faithfully abided by the terms and conditions of the contract ordinance. Many cabs have been held out of service and many parts of the city were not served at all.\(^{240}\) The city's position in the contract case had been substantially weakened by the decision of the Illinois Supreme Court in *Hafer*. Nevertheless, a number of defenses were possible. One— as suggested by the memorandum quoted above and the record developed by the Department of Justice in the antitrust case— was to argue that Checker and Yellow had themselves breached the 1937 ordinance in a way which entitled the city to permit more cabs on the street. Another line of defense was to argue that Checker and Yellow, by failing to enforce their injunctive rights, had failed to mitigate their damages. Another defense was to argue that Checker and Yellow, by repeatedly using their political influence to block issuance of licenses in excess of 3,000, had made it impossible for the city to honor the 1937 priorities and had thus lost any right to damages. The fact that the case had been pending untried for twelve years since the Court of Appeals decision upholding the complaint shows that Checker and Yellow were not eager to try it. The city nevertheless settled the case by giving Checker and

\(^{239}\) City of Chicago v. Vokes, 28 Ill. 2d 475, 193 NE2d 40 (1963)

\(^{240}\) Chicago Corporation Counsel's Files
Yellow what they demanded—the present ordinance granting them a perpetual monopoly over the use of the streets.

V. SUMMARY AND ANALYSIS

The important factor in the development of taxi regulation in the City of Chicago since 1930 has been the ability of the firms already in the industry to remain the only source of information about the industry. Checker, Yellow and the independents share a common interest in preserving their legal protection against new competition. To further this interest they have been able to generate the myth that the industry, under competition, has been proven irresponsible and unstable. Their version of the history of the taxicab industry ignores the more than fifty years of apparently satisfactory free entry and free rate regulation prior to 1929. It emphasizes the financial difficulties of drivers during the depression, but ignores the failure of the regulation to require adequate insurance. It hints darkly of violence, but fails to note that the two major violent events apparently resulted first, from the efforts of an existing company to obtain a de facto monopoly, and second from the grievances of drivers unhappy with their position under the regime of limited competition. This fabricated history has given the city’s regulatory policies an air of propriety they would not otherwise have. The hearings before the Vehicle Commissioner and the City Council’s Committee on Local Transportation have repeatedly been occasions for reaffirmation of the myth by all interested parties. An internal memorandum in the City Corporation Counsel’s office written in 1958 noted that “this procedure is likely not to produce all of the evidence needed to satisfy the criteria (of the public interest) set forth in the ordinance.” “It might be desirable,” continued the memorandum, “to have the Corporation Counsel’s office introduce evidence and cross-examine witnesses from the point of view of public interest. This procedure would be comparable to that before many federal administrative agencies.”241 The suggestion has not been heeded.

The lack of information has enabled the city to pose successfully as a mere bystander to events largely out of its control. Only once, in 1934, when restraints on competition were the style of the moment, did the City Council publicly take the lead in fashioning a major ordinance. In 1937 the City Council was only acting to make possible the settlement of a violent labor dispute. This ploy has proved so attractive that many subsequent fare increases have come only on the heels of a drivers’ strike.242 In the 1940’s and

241 “Analysis of Chicago Taxi Cab Situation,” June 3, 1958, from Corporation Counsel’s Files
242 Chicago Sun Times, Aug. 17, 1968, at 1; Chicago Tribune, Sept. 1, 1968, at 1; Chi-
1950's the city behaved as if it were forced to squeeze the veterans from the streets only by the decisions of the courts. In 1963 the city granted a perpetual monopoly to the licensees only to settle an expensive damage suit. The use of the courts as the apparent forum for the resolution of the controversy has been particularly effective, stilling newspaper criticism because of the papers' traditional reluctance and inability to comment critically on matters in litigation.

The courts themselves have played an important and continuing role in legitimizing the regulation. They have done so on the basis of practically no information on the problem before them. In 1930 the Illinois Supreme Court upheld the entry ordinance without evidence in the record that it had apparently been passed without actual notice to many members of the Council. In 1946 it upheld Checker and Yellow's rights under the 1937 priority ordinance without evidence in the record as to the full extent of Checker and Yellow's breaches of the ordinance. In 1957 it upheld Checker and Yellow's rights to block the issuance of veteran's licenses without considering the way in which Checker and Yellow had selectively enforced their rights under the ordinance. There are a number of legal doctrines which have caused the courts to respond to the regulation in such an abstract way. Most importantly the courts have accorded the City Council the stature of a full fledged legislative body whose implied findings of fact are to be honored if at all plausible. The doctrine of stare decisis has also played a role, fragmenting the issues. The Court upheld the ordinance in 1930 when it simply required a newcomer to show public convenience and necessity. This became a precedent for upholding the 1937 ordinance even though the situation created by that ordinance was in fact quite different. Under the 1929 ordinance any newcomer who went before the Public Vehicle Commission and proved public convenience and necessity would get a license. But under the 1937 ordinance the newcomer had to go to the City Council—a change which limited his right to judicial review. If he succeeded in persuading the Council of the need, however, he would not get any license at all because of the 1937 priorities. These differences were not even pointed out to the court. Then again, in Hafer, the Court upheld the right of Checker and Yellow to bar veterans from the streets because, in litigation between Checker and Yellow and the city, it had upheld the right of Checker and Yellow to have their priorities honored. Also important has been the doctrine of prosecutorial discretion, making proof of inconsistent enforcement policies irrelevant to the validity of the

ordinance—a problem most apparent in the inability of the suburban cabs to use the city’s erratic enforcement policies as a basis for challenging their exclusion from O’Hare.

More important than the operation of these doctrines has been the simple difficulty and expense of organizing and presenting to the courts facts not within the command of either party. The ordinance has often been challenged by outsiders but their arguments have always been that the ordinance is invalid on its face, not that it is invalid as administered. There are benefits to entering the Chicago taxi industry, but they are apparently not sufficient to justify the expense that would be involved in presenting the relevant factual information to the courts. When the courts uphold the ordinance on its face they effectively immunize it from legal challenge, even though they would not sanction—if they were written into the ordinance—the actual enforcement policies. How could the city defend permitting jitneys on South Park but not elsewhere? How could the city defend permitting unlicensed, uninsurred cabs in poor, black neighborhoods but not elsewhere? But legal proof that this is formal city policy is impossible to obtain and possibly of no legal relevance.

The persistent strategy of low visibility pursued by Checker, Yellow and the city is the keystone to their success in preserving the ordinance. They have become skillful practitioners of the strategy since 1929 when the first entry ordinance was crudely slipped through the City Council. The strategy of low visibility has been pursued through consistent adherence to three central principles. First, rates have been set high enough to prevent the occurrence of politically visible scarcity. Second, enforcement policies have been pursued at a low level of severity. Third, the city has always appeared to respond to any criticism made from a quarter with potential political power, often later adopting the contested policy at a time or in a way which escapes notice.

The rate policy of the ordinance is the most important element of the strategy of low visibility. The rate policy has been designed to set rates at a level where the constricted supply of taxicabs is not visible because the number of cabs demanded is not greater than the number available. The task of setting the rates at equilibrium has been left to Checker and Yellow. Under present operating conditions the ordinance now in effect grants this power to them. But there has never been in the history of the ordinance any serious pretense that the rates were set by other than the licensees. The Committee on Local Transportation of the City Council has never made a serious study of the cost conditions in the industry. It has always accepted the financial figures presented by Checker and Yellow without further question. Even when some of the independents—more concerned about off peak demand—have protested fare increases, the Council has gone along with the Checker and Yellow position. To our knowledge, the only critical questions ever asked
at a fare increase hearing occurred at one meeting of the Committee in 1965.\textsuperscript{243} They had been forgotten by the time the next meeting of the Committee was held. Although the Committee has occasionally recommended an increase less than that initially demanded by Checker and Yellow, the companies have never expressed dissatisfaction with the ultimate outcome. Because the ordinance provides for a single rate, setting a rate at equilibrium for all demand conditions has been difficult. To judge by complaints about the difficulty of getting cabs in Chicago during the rush hour, the price chosen has been one which results in a surplus of cabs most of the time and a scarcity for fairly brief periods under peak load conditions. It is difficult to explain why Checker and Yellow have not sought a variable fare to adjust for differing demand conditions. Perhaps they have considered such a system too complex to administer, perhaps they have feared that such a system would raise questions about the need for the higher, peak load rate.

The policy of low level enforcement has kept the procedures by which the ordinance is enforced from being newsworthy. The policy is incorporated in the ordinance itself which provides a maximum fine of $100 for operating without a license.\textsuperscript{244} Neither the city nor the licensees has ever felt it expedient to consider higher penalties. Nor has the city ever felt it expedient to declare "war" on the unlicensed cabs or the suburban cabs operating in the city. Instead the city methodically and persistently enforces the ordinance, continuously picking up a small number of unlicensed cabs and fining their drivers. This operates as a special tax on the illegal operations. Combined with the ability of the licensed cabs to advertise and seek business openly, it protects the capital value of the licenses. Upper limits on the politically acceptable level of enforcement may explain why the capital range of values of licensed cabs in different cities seems to exhibit an upper limit of about $25,000.\textsuperscript{245} A frontal assault on illegal taxicabs with strong enforcement and harsh penalties would be a newsworthy event, confronting the community with the sight of the city forcibly removing small, independent businessmen providing needed service from the streets.

The city has always appeared to respond to criticism of the ordinance. This has tended to obscure the effect of the ordinance and the city's long-term

\textsuperscript{243} By Alderman Sperling, Chicago City Council Comm. on Local Transportation, Taxi Fare Increase Hearings, Oct. 4, 1965, at 16-17.

\textsuperscript{244} Chicago Mun. Code, § 28-32.

willingness to serve the interests of Checker, Yellow and the licensed independents. In 1932 when the newspapers discovered the entry limitation, it was repealed, although the Vehicle Commissioner did not proceed to grant new licenses. In 1937 the newspapers objected to the higher of the two fare increases considered, so the lower increase was adopted. In 1946 the veterans were permitted to operate, but in a way which guaranteed their eventual attrition. In 1952 the ordinance was changed to provide for given number of licenses, thus in theory preventing inevitable attrition. Nevertheless, two years later the Vehicle Commissioner was refusing to reissue licenses that had lapsed. In 1962 the newspapers demanded a solution to the O'Hare problem. It was provided, exclusively by Chicago cabs. A poignant example of this tactic occurred in 1951. Some of the livery owners, threatened with extinction by the ordinance, mounted a letter-writing campaign. To judge by the 19 post-cards and 24 telegrams still in the custody of the City Clerk, the campaign concentrated on the role of liveries at funerals and weddings. The adjustment in the ordinance was no greater, providing an exemption for "a livery vehicle designed to carry seven adult passengers for hire at funerals and weddings. . . ."

Even this narrow exemption was repealed forty days later.  

The most pernicious consequence of the monopoly ordinance has been the significant constraint imposed on the city's public transportation policy. Except for the jitneys on South Park and the gypsies on the west side, the automobile had no role in mass transit in Chicago. The fact that the jitneys, operating licensed cabs with a capital value in excess of $15,000, can offer lower fares than the transit system on short hauls shows the possibilities of the public transit auto. Because the ordinance has eliminated the automobile as a factor in public transportation, the city has been forced to design a system built around large units and fixed routes, an enterprise marked by ever increasing governmental involvement and subsidy. The public, desiring greater flexibility and convenience, has increasingly abandoned public transportation for the private automobile. The lack of a strong public transit automobile system probably, in the long run, has even weakened fixed route mass transit. Fixed route mass transit has its optimum advantages for long hauls during peak load periods. The public transit auto offers the greatest advantage on short hauls without fixed routes—the shopping trip in the neighborhood is perhaps the best example. Since there is no public transportation automobile system for short hauls, the public has purchased automobiles, and once it has invested in them, has used them for all its transportation needs—long and short haul. We can only speculate as to the

\[246\] Chicago City Council Journal, Dec. 20, 1951, at 1599.

differences a strong public transit automobile system might have made in the City of Chicago. It is clear that the City Council chose not to have one for reasons having nothing to do with overall transportation policy.

To judge by the past, the continuing battle over the taxi ordinance is not over. On the one hand, the 1963 ordinance, severely constricting the power of the city to issue additional licenses and set rates appears clearly unconstitutional under the Illinois decisions which upheld the earlier ordinances because the city had reserved those powers. On the other hand, there is some possibility that the courts will construe the 1963 ordinance as a contract ordinance made to settle litigation. If so, the city could not change its policy without paying to the licensees the value of their rights under the ordinance—now about $41,000,000. On the street, the gypsy cabs, black power, and the continuing collapse of short haul fixed route mass transit reveal the fundamental forces still at work. A monopolist’s life, even with the continuing and warm embrace of the government in power, does not seem to be a quiet one.

APPENDIX A

There are several approaches to computing an average annual revenue for independent cabs from the available data. The International Taxi Association (ITA) until recently published industry data on a city-by-city basis compiled from reports submitted by its members. The Association will not reveal the extent of its membership in Chicago or the procedures by which the published information is compiled, and has now stopped publishing the information entirely—perhaps because it discovered the information could be used not only to support applications by members for fare increase, but also to prove that entry controls were expensive for consumers. The following figures are available for the cities covered: total mileage driven, the number of trips and the number of passengers.

Total mileage figure provides one way to compute a total gross revenue for the independent cabs if the assumption is made that both Checker and Yellow and the independents drive the same number of miles for each dollar of fare revenue produced. Under the compensation arrangement for independent drivers they have incentives to push harder for fares since everything over the flat rental fee is theirs. On the other hand a higher percentage of the independent cabs are radio-dispatched and this might make for more efficient utilization. In interviews Checker reported that its cabs are driven an average of 90,000 miles in 2½ years, or 36,000 miles a year.¹ The fleet of 1,500 cabs would then be driven 54,000,000 miles a year. Yellow stated that its fleet covers 60,000,000² miles a year. If the combined total of 114,000,000 miles is divided into the combined 1968 revenue of $36,089,473 the answer is $0.316 in revenue for each mile driven. There are two

¹ Interview with Checker General Manager, Robert Collins.
² Interview with Yellow President, Robert Samuels.
ways to compute independent mileage. An interview with a sample of independent operators suggests that their cabs are operated for 200,000 miles over 2 1/2 years or 80,000 miles a year. For 934 licenses that is 74,720,000 miles a year. ITA reports that Chicago cabs cover 175,000,000 miles a year. Subtracting our estimated Checker and Yellow mileage of 114,000,000, that leaves 61,000,000 for the independents; 74,720,000 times $.316 results in an annual revenue of $24,2 million or $25,900 per independent license; 61,000,000 miles times $.316 results in an annual revenue of $19.3 million or $20,500 per independent license.

Another approach is to compute a total gross revenue for Chicago cabs by combining the ITA figures on trips and passengers with Checker and Yellow operating data on the average length of trip and waiting time charge per trip. This again requires that Checker and Yellow operating figures can be extrapolated to the independents. The concentration of Checker and Yellow on the high-density business area may make both figures lower than for the independents. This computation gives an industry-wide gross annual revenue of $51,925,000. Subtracting the Checker and Yellow total of $36,089,473 leaves 15.8 million or $16,900 per independent license.

A third approach to an estimate of independent's gross income is from the $25 daily rental fee. Drivers pay for gas and oil. If independent cabs are operated 80,000 miles a year or 266 miles a day (assuming 300 days of operation, a conservative estimate), if cabs get 12 miles to the gallon, and gas costs $.36 a gallon, this comes to $7.06 a day. If oil can be ignored, this makes the daily expense of the cab $32. If that represents half of the gross (assuming a 50-50 split between driver and vehicle) then the daily gross revenue is $64 or $19,200 a 300-day year. Since independent drivers reputedly do better than Checker and Yellow drivers, and therefore should take over 50 per cent of the meter, this estimate is probably on the low side.

APPENDIX B

The relationship between the output of a dominant firm and the demand conditions of the industry is expressed by the formula:

\[ P \left( 1 + \frac{k}{n - e(1 - k)} \right) = \theta'(x_i) \]

3 Project interviews.
5 Our interviews with independent licensees suggest that they do not belong to ITA. This means that ITA extrapolates its total mileage figure from Yellow and Checker mileage data, which would show the independents with lower mileage figures than they actually cover.
6 Int'l Taxi Ass'c, supra note 4.
7 Data submitted to City Council at fare increase hearings and obtained from the office of the Committee on Local Transportation.
8 See text at p. 294.
9 Based on project interviews with numerous drivers and licensees of independent cabs.
where
\[ P = \text{price of a unit of output at } x, \]
\[ k = \text{the fraction of output by the dominant firm } x_1, \]
\[ n = \text{the market elasticity of demand}, \]
\[ e = \text{the elasticity of output of the independent firms}, \]
\[ \theta'(x_1) = \text{the marginal cost of the dominant firm at } (x_1), \text{ its unit of output.}^1 \]

In this case the equation can be simplified because \( e = 0 \) since the ordinance does not permit the independent firms to increase the number of their cabs in service, and those in service appear to be fully operated.

All items in the equation require a uniform measure of \( x \), the level of output. We have chosen the 1968 fare dollar as the unit of output which makes \( P = 1 \) and permits comparability between the various kinds of output (trips, passengers, miles, waiting). Then

\[ \frac{k}{\text{Industry gross}} = \frac{\text{Checker and Yellow gross}}{\text{Industry gross}} \]

Using \$20,000 gross revenue as the estimate for independent licenses, industry gross = 934 \times 20,000 + 36,089,473 = 54,769,473 and

\[ k = \frac{36,089,473}{54,769,473} = 66 \text{ per cent} \]

\( \theta'(x_1) = \text{marginal cost of producing } \$1 \text{ of revenue. If 54 percent goes to the driver (counting fringe benefits) and a cab covers 3.2 miles for each fare dollar and operating costs are $.10 a mile then } \theta'(x_1) = .54 + .32 = .86. \text{ So} \]

\[ 1 \left( 1 + \frac{.66}{n - 0 (1 - k)} \right) = .86 \]

\[ 1 + .66 = .86 \]

\[ \frac{n}{n} = .66 = -.14 \]

\[ \frac{-.66}{.14} = n = -4.7 \]

If operating costs for the cab are .08 then \( \theta(x_1) = .54 + .256 = .80 \text{ and} \]

\[ -\frac{.66}{.20} = n = -3.3 \]