

P U B L I C H E A R I N G

ON

SENATE BILL NO. 284 - providing
for compensation for the innocent victims
of crimes.

before

SENATE COMMITTEE ON LAW AND PUBLIC SAFETY

Held:
November 30, 1966.
Assembly Chamber
State House
Trenton, New Jersey

MEMBER OF COMMITTEE PRESENT:

Senator Ned J. Parsekian (Chairman)

Also:

Paul G. Levy, Esq., Counsel [Legislative Aide]

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SENATOR NED J. PARSEKIAN (Chairman): These hearings are called to order before the Senate Committee on Law and Public Safety on Senate Bill No. 284, introduced March 14, 1966. The bill had been assigned to the Committee on State, County and Municipal Government and reassigned by President Lynch to the Committee on Law and Public Safety with the permission of Senator Grossi of Passaic County.

There has been interest shown by several professional groups and individuals to testify at these hearings. Previously several interested parties have indicated they desire to submit written briefs rather than testimony.

These hearings are held in order to give all who wish to present oral testimony the opportunity to do so, and we appreciate those who have taken the trouble to come here today, speaking on behalf of the Committee.

The first witness this morning is Ernest Glickman, an attorney at law with offices in Trenton, and he speaks to us as secretary of the Criminal Law Section of the New Jersey State Bar Association.

Thank you, Mr. Glickman, for coming here.

E R N E S T G L I C K M A N: Senator Parsekian, there was short notice in the sense that this meeting was advanced to the New Jersey State Bar Association and, as a result, we are unable to present a formal statement at this hearing this morning. Nevertheless, through our executive

office of the New Jersey State Bar Association, contact has been made with the officers and trustees and also members of the Criminal Law Section toward the end that a study be made of the provisions of Senate Bill 284.

Needless to say that after a study made by myself of the proposed provisions of this law, it is replete with an advance in the thinking of the State and, of course, it definitely applies to the legal profession as well.

I understand that provisions similar to the one that we have proposed has been adopted by the State of New York which comes into being on March 1, 1967, and that in the State of California we have an analgous type of legislation which smacks a little bit more of the welfare phase of it and, under the circumstances, the New Jersey State Bar Association feels that since the provisions are so replete with possibilities, either for or against, it is necessary that we make a more detailed, complete study of this proposed legislation.

On behalf of the New Jersey State Bar Association at this time, I offer to this Committee and anyone else who might desire to avail themselves of our facilities, of material and information that we have at our command. Mr. Balduc, who is our Executive Secretary, has displayed a keen interest in this program and I feel that since we represent a membership in excess of 6,000 members of the New Jersey State Bar Association,

many of whom are attorneys who practice law every day or who are prosecutors or members of the judiciary, we will then be able to furnish information by way of a cross section of the thinking of the members of the bar who are vitally interested in matters of this sort.

We know that the basic provisions of the act have to do with the protection of the public. At the same time, we recognize the judicial aspect of this thing, and when I say "judicial," I mean the attorney's viewpoint, because I know that a provision in here has to do with compensation for attorneys and also with the formation of the Commission itself and the type of membership that will have to compose that particular Commission to pass judgment on the individual cases that come before it. It is very important that we, the New Jersey State Bar Association, have ample opportunity to digest and analyze this. We have been confronted with situations similar to this with other programs that have been submitted for the purpose of legislation and which, incidentally, have either been rejected or passed. But, nevertheless, we feel, Senator, that if we are given an opportunity, we can present a paper that will break down this thing by way of our thinking, and we are certainly desirous of being helpful under all circumstances.

We appreciate the opportunity given the Association to be heard this morning. Thank you very much.

SENATOR PARSEKIAN: Mr. Glickman, we accept the offer for the Association to provide us with a study of this bill and an analysis of the material and information you have and particularly as to how the over six thousand members of the New Jersey Bar Association react to the suggestions and legislation. It would be helpful if the Association could, with whatever experience is at hand from New York and California, analyze this subject in the light of that experience. I am sure that the Legislature and certainly this Committee would give great weight to the Bar Association's analysis and opinion.

MR. GLICKMAN: I might say, Senator, that we will act with dispatch since we feel that this important piece of legislation should be analyzed. I cannot, of course, commit myself so far as time is concerned, but we certainly will move quickly in this particular matter.

SENATOR PARSEKIAN: It may well be, with that help, that during the legislative session next year we can look forward to introducing an improved bill if the study indicates it needs improvement.

Thank you very much.

Mr. Don Altman, Assistant Attorney General, who is here to testify on behalf of and for Attorney General Arthur J. Sills. Attorney General Sills has been interested in this problem for a long time and is perhaps the current pioneer in thinking

in the State government on this important problem.

Mr. Altman.

D O N A L D M. A L T M A N: Thank you,
Senator.

As you have noted, these remarks were prepared
by General Sills. Unfortunately a conflict in his
schedule precluded his being here in person to
deliver them. [Reading]

SLIGHTLY MORE THAN TWO YEARS AGO, THE THEN JUSTICE OF
THE UNITED STATES SUPREME COURT, ARTHUR GOLDBERG, WROTE:

"THE VICTIM OF A ROBBERY, OR AN ASSAULT HAS BEEN
DENIED THE 'PROTECTION' OF THE LAWS IN A VERY REAL
SENSE, AND SOCIETY SHOULD ASSUME SOME RESPONSIBILITY
FOR MAKING HIM WHOLE." "EQUALITY AND GOVERNMENTAL
ACTION," 39 N.Y.U.L. REV. 205, 224 (.964).

THIS BRIEF COMMENTARY ON THE PLIGHT OF THE INNOCENT
VICTIM OF A VIOLENT CRIME STRIKES AT A SERIOUS DEFICIENCY IN
CONTEMPORARY STANDARDS OF FAIR AND EQUITABLE ADMINISTRATION OF
CRIMINAL JUSTICE. INDEED, AS ONE SCHOLAR HAS OBSERVED,
UNTIL RECENT YEARS,

"MODERN CRIMINALISTS AND CRIMINOLOGISTS HAD BEEN
CONDITIONED TO THINK... AS IF ONLY TWO PARTIES
WERE INVOLVED IN CRIME -- THE PERPETRATOR AND
SOCIETY. . . SOCIETY WAS AGGRIEVED AND SOCIETY
ALONE COULD REDRESS THE WRONG WITH PENAL SANCTION."
MUELLER, "COMPENSATION TO VICTIMS OF CRIME . . ."
50 MINN. L. Rev. 213, 214 (1965).

IN EFFECT, THE PARTY MOST DIRECTLY AFFECTED BY A
BREAKDOWN IN LAW AND ORDER, THE INNOCENT VICTIM OF CRIME, HAS
TRADITIONALLY BEEN THE FORGOTTEN MAN IN THE QUEST TO PRESERVE
LAW AND ORDER. I BELIEVE, HOWEVER, THAT THE TIME HAS ARRIVED
WHERE SOCIETY SHOULD NO LONGER PERPETUATE THIS CONTINUED OVER-
SIGHT OR NEGLECT. IF SOCIETY NEEDS A VICTIM TO STAKE ITS CLAIM
TO JUSTICE, THEN SOCIETY SHOULD MAKE AMENDS WHERE IT HAS FAILED
TO PROVIDE THE PROTECTION WHICH IS THE ESSENCE OF THE SOCIAL
COMPACT.

PERHAPS IT IS FITTING TO CONSIDER THE PLIGHT OF THE
VICTIM OF CRIME IN THE CONTEXT OF THE FUNDAMENTAL REASSESSMENT
WE HAVE WITNESSED IN RECENT DECADES WITH RESPECT TO THE RIGHTS
OF PERSONS ACCUSED OF CRIME. STIMULATED BY A SERIES OF PRECEDENT-
MAKING UNITED STATES SUPREME COURT DECISIONS, WE HAVE BECOME
INCREASINGLY AWARE THAT TO INFRINGE ON THE RIGHTS OF THE ACCUSED
IS TO THREATEN THE RIGHTS OF ALL FREE MEN, THE INNOCENT AS WELL

AS THE GUILTY.

SOME PEOPLE HAVE COMPLAINED THAT THIS EMPHASIS APPEARS AS A SHIELD AGAINST THE RIGHTFUL PROSECUTION OF THOSE WHO PERPETRATE ACTS INIMICAL TO THE INTERESTS OF SOCIETY AS A WHOLE. THESE SAME PEOPLE ARE CONCERNED THAT THE BALANCE OF JUSTICE HAS SWUNG IN FAVOR OF THE CRIMINAL WHILE CONCERN FOR HIS VICTIM IS BECOMING INCREASINGLY LESS IMPORTANT. MY PERSONAL BELIEF IS THAT THESE CONCEPTS ARE NOT IN CONFLICT.

I BELIEVE JUSTICE SHOULD BE EQUATED WITH THE FAIR AND EQUITABLE TREATMENT OF THE ACCUSED. BUT I ALSO BELIEVE JUSTICE FALLS SHORT IF SOCIETY SHOULD CONTINUE TO DIVEST ITSELF OF THE RESPONSIBILITY FOR THE SUFFERING OF THOSE WHOM IT HAS FAILED TO PROTECT. JUSTICE FALLS SHORT WHEN, AFTER THE VERDICT OF GUILT HAS BEEN RENDERED IN A CRIMINAL PROSECUTION, SOCIETY RESTS AS THE VICTIM OR HIS DEPENDENTS ASSUME IN SOLITUDE THE HARDSHIPS OF INJURY SUSTAINED IN INNOCENCE.

THIS NO LONGER NEED BE THE CASE. I BELIEVE WE HAVE OR CAN FIND THE CAPACITY TO ESTABLISH A PROGRAM IN THIS STATE

TO MAKE "WHOLE" THOSE PERSONS WHO ARE VICTIMIZED BY CRIMES OF VIOLENCE.

I FURTHER BELIEVE THE CONCEPT EMBODIED IN SUCH A PROGRAM IS IN KEEPING WITH ENLIGHTENED, HUMANITARIAN IDEALS WHICH ARE PART OF CONTEMPORARY AMERICAN THOUGHT. IT IS A CONCEPT WHICH ALSO APPEALS TO MEN OF ALL POLITICAL PERSUASIONS, AS INDICATED, FOR EXAMPLE, BY THE PASSAGE OF A COMPENSATION PROGRAM IN THE STATE OF NEW YORK IN JULY OF THIS YEAR WITH THE ASSEMBLY VOTING UNANIMOUSLY. FURTHERMORE, IT IS A CONCEPT WHICH APPARENTLY MEETS WITH STRONG POPULAR APPEAL. ACCORDING TO A GALLUP POLL OF OCTOBER 29, 1965, 62% OF THE PEOPLE POLLED FAVORED A STATE COMPENSATION PROGRAM FOR INNOCENT VICTIMS OF CRIME.

THE PURPOSE OF THIS HEARING IS TO CONSIDER LEGISLATION WHICH HAS BEEN INTRODUCED TO CREATE A VIOLENT CRIMES COMPENSATION PROGRAM IN NEW JERSEY. STATED SIMPLY, THE CONCEPT OF THIS LEGISLATION IS TO AUTHORIZE THE GRANTING OF A MONETARY -----

AWARD TO A PERSON INJURED BY THE VIOLENT ACT OF A THIRD PARTY.

HISTORICAL BACKGROUND

BEFORE PROCEEDING, I BELIEVE IT IS IMPORTANT TO INDICATE THAT THE CONCEPT OF COMPENSATING VICTIMS OF CRIME, EITHER BY GOVERNMENT OR THE OFFENDER, IS BY NO MEANS A DEVELOPMENT OF THIS GENERATION.

IN EARY WESTERN CULTURE COMPENSATION BY THE OFFENDER CAN BE TRACED AS FAR BACK AS THE EARLY HEBREWS WHERE THE OFFENDER "HAD TO PAY FOR THE VICTIM'S LOSS OF TIME AND CAUSE HIM TO BE THOROUGHLY HEALED." [21 EXODUS 18, 19, CITED IN WOLFGANG, "VICTIM COMPENSATION," 50 MINN. L. REV. 223, 224, (1965)]. THE PRINCIPLE OF COMPENSATION BY THE OFFENDER REACHED ITS HIGHEST PRECONTEMPORARY DEVELOPMENT IN 7TH CENTURY ANGLO-SAXON ENGLAND WHERE PAYMENT WAS PRESCRIBED FOR A VARIETY OF CRIMES. [WORSNOP, "COMPENSATION FOR VICTIMS OF CRIME," 11 ED. RES. REPS. 685, 694-5, (1965)].

COMPENSATION BY GOVERNMENT, ON THE OTHER HAND, MAY BE FOUND AS EARLY AS THE CODE OF HAMMURABI IN 2250 B.C., WHERE THE VICTIM OF A ROBBERY, OR HIS DEPENDENTS IF HE WERE MURDERED, RECEIVED PAYMENT FROM THE CITY AND THE GOVERNOR. GOVERNMENT COMPENSATION CAN ALSO BE FOUND IN THE 5TH CENTURY GREEK CITY-STATE.

BY THE 10TH CENTURY, HOWEVER, PUNISHMENT HAD ESTABLISHED ITSELF AS A REPLACEMENT FOR COMPENSATION EITHER BY GOVERNMENT OR AS THE OFFENDER'S EXPIATION FOR HIS CRIME. THE KING OR FEUDAL LORD HAD COME TO DEMAND SOME, THEN ALL, OF THE COMPENSATION ORIGINALLY GIVEN TO THE VICTIM, AND THE CHRISTIAN CONCEPTS OF SIN AND PENANCE WERE ABSORBED INTO THE PENAL LAW. [WORSNOP, AT 693]. THIS PRACTICE HAS REMAINED UNTIL THIS DAY, FOR WHERE FINES ARE IMPOSED, "THE STATE RETAINS THE PROCEEDS, AND THE VICTIM GETS NO COMPENSATION." [BARNES AND TEETERS, NEW HORIZONS IN CRIMINOLOGY, 401 (1943) CITED IN WOLFGANG, AT 227].

THE INTELLECTUAL HISTORY OF GOVERNMENT COMPENSATION TO

CRIME VICTIMS DATES ONLY TO THE 19TH CENTURY AND WAS LARGELY

THE EFFORT OF MEN LIKE JEREMY BENTHAM AND SIR ROBERT ANDERSON.

[CHILDRES, "COMPENSATION ," 39 N.Y.U.L. REV. 444, 448 (1964)].

CONTEMPORARY DEVELOPMENTS

NOT UNTIL THIS DECADE, HOWEVER, DID THE MOVEMENT FOR GOVERNMENT PROGRAMS OF COMPENSATION FOR CRIME VICTIMS MEET WITH FRUITION. MUCH CREDIT FOR THIS MUST BE GIVEN TO THE NOTED PENAL REFORMER, MARGERY FRY, WHO DIED IN 1958 AFTER AN INTENSIVE FOUR-YEAR CAMPAIGN IN GREAT BRITAIN.

NEW ZEALAND WAS THE FIRST COUNTRY TO INAUGURATE A GOVERNMENTAL PROGRAM ON JANUARY 1, 1964, AND GREAT BRITAIN FOLLOWED WITH ITS PROGRAM SEVEN MONTHS LATER. BOTH OF THESE COUNTRIES ESTABLISHED CRIME COMPENSATION TRIBUNALS TO GRANT AWARDS TO VICTIMS OR THEIR DEPENDENTS FOR CERTAIN FINANCIAL HARDSHIPS, SUCH AS LOSS OF PAY OR MEDICAL BILLS, RESULTING FROM CRIMES OF VIOLENCE.

ON JANUARY 1, 1966, CALIFORNIA BECAME THE FIRST STATE

TO EFFECTUATE A COMPENSATION PROGRAM. UNLIKE OTHER PROGRAMS AND PROPOSALS, CALIFORNIA BASES AWARDS SOLELY ON NEED WITH THE CRITERIA FOR PAYMENT SUBSTANTIALLY THE SAME AS THOSE PROVIDED FOR AID TO FAMILIES WITH DEPENDENT CHILDREN. IN JULY OF THIS YEAR, THE LEGISLATURE OF NEW YORK PASSED A LAW CREATING A THREE-MEMBER COMPENSATION BOARD EFFECTIVE AS OF MARCH 1, 1967.

SIMILAR PROPOSALS HAVE BEEN INTRODUCED IN OTHER STATES [e.g., RHODE ISLAND, H. BILL 1109 (1966); MARYLAND, S. BILL 151 (1966); OREGON, H. BILL 1822 (1965); WISCONSIN, S. BILL 450 (1965) AND IN THE UNITED STATES CONGRESS. THE MOST PUBLICIZED FEDERAL PROPOSAL IS SENATOR YARBOROUGH'S S. 2155 (1965).

SENATE BILL NO. 284

SENATE BILL NO. 284, THE SUBJECT OF TODAY'S HEARING, IS PATTERNED AFTER THE BRITISH, NEW ZEALAND, AND YARBOROUGH PLANS, WITH MODIFICATIONS AND ADDITIONS DESIGNED TO ENHANCE ITS POTENTIAL EFFECTIVENESS.

THIS BILL WOULD ESTABLISH A THREE-MAN VIOLENT CRIMES

COMPENSATION COMMISSION APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE TO SERVE SIX-YEAR TERMS (§ 3).

THE COMMISSION WOULD BE AUTHORIZED TO MAKE MONEY AWARDS TO AN APPLICANT FOR PERSONAL INJURY OR DEATH WHICH RESULTED FROM (a) AN ATTEMPT TO PREVENT THE COMMISSION OF CRIME OR TO ARREST A SUSPECTED CRIMINAL OR TO AID OR TO ATTEMPT TO AID A LAW ENFORCEMENT OFFICIAL SO TO DO, OR (b) THE COMMISSION OR ATTEMPT TO COMMIT ANY CRIME OR OFFENSE INVOLVING VIOLENCE (§ 13).

AWARDS MAY BE MADE (a) TO OR ON BEHALF OF THE INJURED PERSON, (b) TO PERSONS SUFFERING PECUNIARY LOSS OR INCURRING EXPENSES WHO ARE RESPONSIBLE FOR MAINTENANCE OF THE VICTIM, AND (c) TO DEPENDENTS OF A DECEASED VICTIM OR ANY PERSON WHO DEPENDS UPON THE VICTIM FOR MAINTENANCE.

IN DETERMINING THE AMOUNT OF COMPENSATION TO BE AWARDED, THE COMMISSION MAY CONSIDER ANY CIRCUMSTANCES IT DETERMINES TO BE RELEVANT AND SHALL REDUCE AN AWARD IN PROPORTION TO THE EXTENT IT

CONSIDERS THE APPLICANT TO HAVE BEEN AT FAULT (§ 10).

PAYMENT OF COMPENSATION UNDER S. 284 MAY BE MADE FOR

(a) EXPENSES ACTUALLY AND REASONABLY INCURRED AS A RESULT OF THE PERSONAL INJURY OR DEATH OF THE VICTIM, (b) LOSS OF EARNING POWER AS A RESULT OF TOTAL OR PARTIAL INCAPACITY OF SUCH VICTIM, (c) PECUNIARY LOSS TO THE DEPENDENTS OF THE DECEASED VICTIM OR OTHER PERSONS WHO DEPEND UPON THE VICTIM FOR MAINTENANCE, (d) PAIN AND SUFFERING OF THE VICTIM, AND (e) ANY OTHER PECUNIARY LOSS RESULTING FROM THE PERSONAL INJURY OR DEATH OF THE VICTIM WHICH THE COMMISSION DETERMINES TO BE REASONABLE (§ 12).

NO COMPENSATION AWARDS CAN BE MADE BY THE COMMISSION IF THE VICTIM IS (a) RELATIVE OF THE OFFENDER, (b) WAS AT THE TIME OF THE PERSONAL INJURY OR DEATH OF THE VICTIM LIVING WITH THE OFFENDER AS HIS WIFE OR HER HUSBAND OR AS A MEMBER OF THE OFFENDER'S HOUSEHOLD, (c) WAS CONVICTED OF A CRIME WHICH CAUSED OR CONTRIBUTED TO HIS INJURIES, OR (d) WAS INJURED BY A MOTOR VEHICLE, BOAT OR AIRPLANE UNLESS THEY WERE USED IN A DELIBERATE ATTEMPT TO INJURE OR KILL THE

VICTIM (§ 16).

THE PURPOSE OF THESE EXCLUSIONS IS TO PREVENT PERSONS
TINGED WITH GUILT FROM BENEFITING FROM A COMPENSATION AWARD AND,
FURTHER, TO EXCLUDE A LARGE FIELD COVERED BY INSURANCE.

FURTHERMORE, THE BILL, AS PRESENTLY WRITTEN, PRECLUDES
AN AWARD WHERE THE LOSS OR INJURY WOULD NOT BE AT LEAST \$500 AND
NO AWARD CAN EXCEED \$25,000. (§ 17).

THE COMMISSION WOULD ALSO BE REQUIRED TO DEDUCT FROM AN
AWARD ANY PAYMENT RECEIVED BY AN APPLICANT FROM THE UNITED STATES,
THIS STATE OR ANY OF ITS SUBDIVISIONS, FOR PERSONAL INJURY OR DEATH
COMPENSABLE UNDER S. 284. IT MAY ALSO TAKE INTO CONSIDERATION PAYMENTS
RECEIVED BY THE APPLICANT FROM ANY OTHER SOURCES AS A RESULT OF AN
OCCURRENCE GIVING RISE TO THE APPLICATION (§ 18).

COMMENT--FINANCIAL CONSIDERATIONS

OF PRIMARY CONCERN TO THOSE OF US WHO ESPOUSE A COMPEN-
SATION TO VICTIMS OF CRIME PROGRAM IS THE QUESTION OF "HOW MUCH WILL
IT COST?" PERHAPS TO SOME PEOPLE A PROGRAM OF THIS SORT SUGGESTS

A WELFARE-TYPE PROGRAM MASSIVE IN SCOPE DUE TO A "MASSIVE" CRIME PROBLEM. I DOUBT SUCH WOULD BE THE CASE.

GREAT BRITAIN SEEMS TO HAVE FOUND ITS PROGRAM FINANCIALLY MANAGEABLE OVER THE FIRST 20 MONTHS OF ITS OPERATION. DURING THIS PERIOD, THE BRITISH CRIMINAL INJURIES COMPENSATION BOARD DISPOSED OF 1,505 CASES AND AWARDED \$1,142,154. [CRIMINAL INJURIES COMPENSATION BOARD, SECOND REPORT, MARCH 31, 1966, p. 4]. THIS DOES NOT APPEAR EXTRAVAGANT WHEN COMPARED, FOR EXAMPLE WITH THE NEW YORK STATE COST OF \$250,000,000 A YEAR FOR WORKMEN'S COMPENSATION [GELLHORN AND LAUER, "ADM. OF THE N.Y. WORKMEN'S COMP. LAW," 37 N.Y.U.L. REV. 564, 601 (1962)].

THE RESTRICTIONS AS TO PAYMENT SET FORTH IN S. 284 , EVEN WITH THE FURTHER SUGGESTIONS WHICH I SHALL MAKE LATER, SERVE TO KEEP THIS PROGRAM WITHIN MANAGEABLE LIMITS.

PRELIMINARY STUDY

IT IS TRUE THAT MANY PERSONS HAD PREVIOUSLY IN CONVERSATION

INDICATED TO ME THAT, ALTHOUGH THEY AGREED IN PRINCIPLE WITH A PROPOSAL OF THIS KIND, THEY FELT SUCH A PROGRAM TO BE FINANCIALLY IMPRACTICAL. "LOOK AT THE CRIME STATISTICS," THEY SAID. IT WAS MY BELIEF THAT, IF THESE PEOPLE WERE CORRECT, IT SHOULD BE IMMEDIATELY EVIDENT FROM A REVIEW OF THE CRIME RECORDS OF A TYPICAL LAW ENFORCEMENT AGENCY.

WHILE MY OFFICE IS NOT STAFFED TO ANALYZE IN A SHORT TIME THE CRIME RECORDS OF THE STATE IN GREAT DEPTH, NEVERTHELESS, WITH THE COOPERATION OF MAYOR ARMENTI AND CHIEF NEESE, MY OFFICE THIS SUMMER DID LOOK AT THE VIOLENT-CRIME RECORDS OF THE CITY OF TRENTON FOR THE THREE-MONTH PERIOD OF APRIL-JULY, 1966. STATE POLICE RECORDS WERE ALSO SURVEYED FOR THE SAME PERIOD. THIS STUDY DISCLOSED THAT OF THE 105 VIOLENT CRIMES REPORTED IN BOTH AGENCIES ONLY 9, PRIMA FACIE, WOULD HAVE OBTAINED COMPENSATION UNDER THIS BILL.

WHILE THE RESULTS OF THIS SURVEY ARE BY NO MEANS CONCLUSIVE, NOR WAS THE STUDY INTENDED TO BE CONCLUSIVE, THEY DO SUGGEST THAT,

NOTWITHSTANDING CRIME STATISTICS, THE COST SHOULD NOT BE OUT OF LINE WHEN COUNTERBALANCED WITH THE INTEREST OF OUR CITIZENS.

FURTHER CONSIDERATIONS

VARIOUS OTHER QUESTIONS HAVE BEEN RAISED WITH RESPECT TO A VICTIMS COMPENSATION PROGRAM. THERE ARE THOSE WHO ASK, FOR EXAMPLE, WHY SHOULD CERTAIN TYPES OF OFFENDERS, SUCH AS RELATIVES, BE EXCLUDED ARBITRARILY. SHOULD THERE BE A MINIMUM AWARD AND, IF SO, WHAT SHOULD IT BE? HOW BROAD OR HOW RESTRICTIVE SHOULD A PROGRAM OF THIS SORT BE?

IT IS OUR FEELING THAT, AT ITS INCEPTION, A VICTIM
COMPENSATION PROGRAM SHOULD BE SOMEWHAT RESTRICTIVE AND THEN BE
EXPANDED AS EXIGENCIES ARISE. NEVERTHELESS, I RECOMMEND A CHANGE
WITH RESPECT TO THE MINIMUM AWARD OF \$500 DOWNWARD TO \$100 FOR
REASONS HEREINAFTER EXPRESSED.

RECOMMENDED REVISIONS

THERE ARE CERTAIN RECOMMENDATIONS WHICH I DESIRE TO MAKE
WITH RESPECT TO PROVISIONS OF S. 284. TO THE EXTENT POSSIBLE I
WILL DISCUSS THESE REVISIONS CHRONOLOGICALLY.

AT THE OUTSET, IT IS OUR FEELING THAT THE TITLE OF S. 284
MAY BE MISLEADING. WE ARE NOT TALKING ABOUT "CRIMINAL INJURIES."
WE ARE TALKING ABOUT "VIOLENT CRIMES." I THEREFORE RECOMMEND THAT
SECTION 1 BE CHANGED TO READ:

"THIS ACT SHALL BE KNOWN AND CITED AS THE VICTIMS
OF VIOLENT CRIMES COMPENSATION ACT OF 1966."

I ALSO BELIEVE THE TERM "ACTUAL" SHOULD BE DELETED FROM THE DEFINITION OF "PERSONAL INJURY" IN SECTION 2(d). IT SERVES NO PARTICULAR PURPOSE AND MAY BE CONFUSING IN VIEW OF THE COMPLETE DEFINITION.

DEFINITION OF "RELATIVE"

AS IT IS NOW WRITTEN, S. 284 DEFINES "RELATIVE" AS "SPOUSE, PARENT, GRANDPARENT, SISTER, OR SPOUSE'S PARENTS," AND FURTHER ELIMINATES FROM ELIGIBILITY ANY PERSON WHO "WAS AT THE TIME OF THE PERSONAL INJURY OR DEATH OF THE VICTIM LIVING WITH THE OFFENDER AS HIS WIFE OR HER HUSBAND OR AS A MEMBER OF THE OFFENDER'S HOUSEHOLD."

IT MAY BE THAT THE LEGISLATURE WILL FIND THIS DEFINITION TOO BROAD, ESPECIALLY AT THE OUTSET OF THIS PROGRAM, SINCE, IN THE MILIEU WHERE SUCH CRIMES ARE OFTEN COMMITTED, FAMILY RELATIONSHIPS ARE NOT SO CLEARLY DEFINED. OFTEN PARAMOURS MAY NOT BE LIVING TOGETHER ON A PERMANENT BASIS, ALTHOUGH THE NATURE OF THEIR

RELATIONSHIP MAY NOT DIFFER FUNDAMENTALLY FROM A COMMON LAW LIAISON.
(The Attorney General suggests we take a look at the New York Law as an example of that, and possible definition.)

THE NEW YORK LAW DEFINES "FAMILY" AS

"(a) ANY PERSON RELATED TO SUCH PERSON WITHIN
THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY,
(b) ANY PERSON MAINTAINING A SEXUAL RELATIONSHIP
WITH SUCH PERSON, OR (c) ANY PERSON RESIDING
IN THE SAME HOUSEHOLD WITH SUCH PERSON."

(A. BILL 7172, § 621:4)

THIS DEFINITION MAY BE WORTHY OF CONSIDERATION BY OUR
LEGISLATURE FOR PRESENT PURPOSES.

ASSIGNMENT OF COMMISSION AND DESIGNATION OF CHAIRMAN

S. 284 DOES NOT ASSIGN THE VIOLENT CRIMES COMPENSATION
COMMISSION TO A PARTICULAR DEPARTMENT OF THE EXECUTIVE BRANCH. I
RECOMMEND THAT IT BE PLACED IN THE DEPARTMENT OF LAW AND PUBLIC
SAFETY. I SUGGEST FURTHER THAT SECTION 3 PROVIDE THAT ALL MEMBERS
SHALL SERVE ON A FULL-TIME BASIS.

WITH RESPECT TO SECTION 3(a), I SUGGEST THAT THE
GOVERNOR BE AUTHORIZED TO APPOINT A CHAIRMAN OF THE COMMISSION

EVERY THREE YEARS, AT WHICH TIME THE SAME MEMBER COULD BE REDES-
IGNATED OR ANOTHER CHOICE BE MADE.

RULES AND REGULATIONS OF COMMISSION

SINCE S. 284 WAS DRAFTED, I HAVE ALSO COME TO BELIEVE
THAT THE PROVISION SETTING FORTH THE POWERS OF THE COMMISSION TO
MAKE RULES AND REGULATIONS MAY DESERVE FURTHER CONSIDERATION.

SECTION 7 STATES:

"IN THE PERFORMANCE OF ITS FUNCTIONS, THE
COMMISSION IS AUTHORIZED TO MAKE RULES AND REGULA-
TIONS PRESCRIBING PROCEDURES TO BE FOLLOWED IN THE
FILING OF APPLICATIONS AND THE PROCEEDINGS UNDER
THIS ACT, AND SUCH OTHER MATTERS AS THE COMMISSION
DEEMS APPROPRIATE."

UNDER THE NEW YORK LAW, ITS BOARD IS EMPOWERED

"TO ADOPT, PROMULGATE, AMEND AND RESCIND SUITABLE
RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS
AND PURPOSES OF THIS ARTICLE, INCLUDING RULES FOR
THE APPROVAL OF ATTORNEY'S FEES FOR REPRESENTATION

BEFORE THE BOARD" (SECTION 623:3).

S. 284 RESTRICTS THE COMMISSION'S RULE-MAKING AUTHORITY TO THE FILING OF APPLICATIONS AND THE PROCEEDINGS UNDER THE ACT. IN NEW YORK THE BOARD'S AUTHORITY, IN THIS RESPECT, IS MORE FLEXIBLE AND, IN MY OPINION, MORE DESIRABLE.

SHOULD THE LEGISLATURE EFFECTUATE A VICTIMS COMPENSATION PROGRAM, IT MAY BE DESIRABLE TO GRANT TO THE COMMISSION DISCRETION NECESSARY TO RENDER THE LEGISLATION FULLY OPERATIVE AND IN KEEPING WITH THE BROAD SOCIAL PURPOSE FOR WHICH IT IS INTENDED.

IF THIS REVISION IS MADE, I BELIEVE IT SHOULD APPEAR AS SECTION 3(h) OF S. 284. THE PRESENT SECTION 7 WOULD THEREFORE BE DELETED.

I ALSO RECOMMEND THAT THE LEGISLATURE INCORPORATE THE FOLLOWING PROVISIONS AS 3(i), 3(j) and 3(k), ALL OF WHICH APPEAR IN THE NEW YORK PROGRAM.

THESE ADDITIONS WOULD EMPOWER THE COMMISSION:

3(i) TO REQUEST FROM THE DIVISION OF STATE POLICE, FROM COUNTY OR MUNICIPAL POLICE AND AGENCIES AND FROM ANY OTHER STATE OR MUNICIPAL DEPARTMENT OR AGENCY, OR PUBLIC AUTHORITY, AND THE SAME ARE HEREBY AUTHORIZED TO PROVIDE, SUCH ASSISTANCE AND DATA AS WILL ENABLE THE COMMISSION TO CARRY OUT ITS FUNCTIONS AND DUTIES.

3(j) TO HEAR AND DETERMINE ALL CLAIMS FOR AWARDS FILED WITH THE COMMISSION PURSUANT TO THIS ARTICLE, AND TO REINVESTIGATE OR REOPEN CASES AS THE COMMISSION DEEMS NECESSARY.

3(k) TO DIRECT MEDICAL EXAMINATION OF VICTIMS WHERE NECESSARY.

CONDUCT OF HEARINGS (SECTION 4)

WITH RESPECT TO THE POWERS ENUMERATED IN SECTION 4 OF S. 284, I ALSO RECOMMEND THAT PROVISION BE MADE TO ALLOW THE ISSUANCE OF SUBPOENAS UNDER THE SIGNATURE OF THE ATTORNEY GENERAL OR THE EXECUTIVE SECRETARY OF THE COMMISSION AS WELL AS THE

COMMISSION MEMBERS. I SUGGEST THIS MERELY AS A MATTER OF
CONVENIENCE.

FURTHERMORE, I RECOMMEND THAT PROVISION BE MADE IN
SECTION 4 TO REQUIRE THAT THE ATTORNEY GENERAL AND THE COUNTY
PROSECUTOR BE NOTIFIED PROMPTLY WHEN A CLAIM IS FILED.

I ALSO BELIEVE IT WOULD BE DESIRABLE THAT ALL DECISIONS
BE IN WRITING, SETTING FORTH THE FACTS, FINDINGS, AND AWARDS WITH
REASONS THEREFOR.

LEGAL FEES

SECTION 5 OF S. 284 AUTHORIZES THE COMMISSION TO SET
REASONABLE ATTORNEYS FEES WHICH SHALL NOT IN ANY EVENT EXCEED
\$500. I RECOMMEND THAT THIS BE REDRAFTED TO READ THAT:

"THE COMMISSION MAY, AS PART OF ANY ORDER
ENTERED UNDER THIS ACT, DETERMINE AND ALLOW REASONABLE
FEES TO A CLAIMANT'S ATTORNEY."

FURTHERMORE, I RECOMMEND THAT THE PENALTY SET FORTH IN

SECTION 5 WITH RESPECT TO FEES RECEIVED IN EXCESS OF AN AMOUNT SET BY THE COMMISSION BE CHANGED TO A DISORDERLY PERSON OFFENSE.

APPEALS

SECTION 6 OF S. 284 PROVIDES THAT THE DECISION OF THE COMMISSION SHALL BE FINAL AND NOT APPEALABLE TO ANY COURT OF LAW.

THE QUESTION OF THE RIGHT TO APPEAL IS ONE WHICH HAS BEEN THE SUBJECT OF MUCH CONTROVERSY. BASICALLY, THE AMERICAN SYSTEM OF JURISPRUDENCE SEEKS GENERALLY TO GRANT THE RIGHT TO APPEAL. MANY FEEL IT IS UNDEMOCRATIC NOT TO PROVIDE THIS RIGHT.

ON THE OTHER HAND, THERE ARE THOSE WHO CONSIDER A PROGRAM OF THIS KIND LARGESSE FROM THE SOVEREIGNTY. FOR EXAMPLE, THE NEW YORK LAW, IN ITS DECLARATION OF POLICY AND INTENT, STATES:

"THE LEGISLATURE FINDS AND DETERMINES THAT THERE IS A NEED FOR GOVERNMENTAL FINANCIAL ASSISTANCE FOR . . . VICTIMS OF CRIME. ACCORDINGLY, IT IS THE LEGISLATURE'S INTENT THAT AID, CARE AND SUPPORT BE

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PROVIDED BY THE STATE, AS A MATTER OF GRACE, FOR
SUCH VICTIMS OF CRIME." (§ 620)

THERE ARE ADDITIONAL FACTORS PROMPTING CAUTION AT
THE OUTSET WITH RESPECT TO THIS QUESTION. THESE RELATE TO THE
COST OF THE PROGRAM AND TO THE MATTER OF FURTHER OVERBURDENING OUR
COURTS.

I HAVE GIVEN MUCH THOUGHT TO THE MATTER OF APPEAL AND
I SUGGEST, FOR YOUR CONSIDERATION, THE FOLLOWING WHICH IS A
COMPROMISE BETWEEN THESE TWO PHILOSOPHIES.

I SUGGEST THAT THE ATTORNEY GENERAL AND THE STATE
TREASURER BE AUTHORIZED TO APPEAL AN AWARD CONSIDERED IMPROPER OR
EXCESSIVE. ADDITIONALLY, I BELIEVE IT IS REASONABLE TO GRANT AN
APPLICANT THE RIGHT OF APPEAL SOLELY ON QUESTIONS OF LAW. I DO
NOT BELIEVE, HOWEVER, THAT A CLAIMANT'S APPEAL SHOULD BE ALLOWED
WITH RESPECT TO THE AMOUNT OF AN AWARD SET BY THE COMMISSION OR

FACTUAL FINDINGS OF THE COMMISSION.

SECTIONS 10--14

SECTION 10 OF S. 284 REQUIRES THAT THE COMMISSION SHALL REDUCE AN AWARD IN PROPORTION TO THE EXTENT TO WHICH THE CIRCUMSTANCES CONSIDERED REVEAL AN APPLICANT TO HAVE CAUSED HIS OWN INJURIES. I BELIEVE THE TERM "SHALL" IN THE SECOND SENTENCE OF THIS SECTION SHOULD BE CHANGED TO "MAY" IN VIEW OF THE FACT THAT THE PREVIOUS PROVISION OF SECTION 10 READS THAT THE COMMISSION MAY/CONSIDER CIRCUMSTANCES RELEVANT TO SUCH REDUCTIONS. THE TERM "DEFENDANT" SHOULD BE CHANGED TO "APPLICANT."

THE FIRST SENTENCE OF SECTION 11 SHOULD BE CHANGED TO READ "AN ORDER OF COMPENSATION MAY BE MADE UNDER THIS ACT WHETHER OR NOT ANY PERSON IS PROSECUTED OR CONVICTED OF ANY OFFENSE ARISING OUT OF SUCH ACT OR OMISSION." IN LINE 1 OF SECTION 12 AND LINE 2 OF SECTION 13 THE TERM "ACT" SHOULD BE CAPITALIZED, AND IN LINE 1

OF SECTION 14 THE TERM "BOARD" SHOULD BE REPLACED BY "COMMISSION."

ARBITRARY EXCLUSIONS

UNDER SECTION 16 OF S. 284 NO DISCRETION IS PROVIDED TO THE COMMISSION CONCERNING THOSE PERSONS WHO ARE EXCLUDED FROM COMPENSATION UNDER THE ACT.

PREVIOUSLY, I TOOK THE POSITION THAT, AT THE OUTSET OF SUCH A PROGRAM, THE STANDARDS SHOULD BE SOMEWHAT STRICT UNTIL IT IS DETERMINED HOW THE PROGRAM IS PROCEEDING. NOTWITHSTANDING THIS, WE SHOULD BE CAREFUL NOT TO EXCLUDE SOMEONE FROM COMPENSATION WHO MAY HAVE LEGITIMATE NEED FOR ASSISTANCE, YET WHO MAY NOT MEET THE STANDARDS OF THE BILL. WE CANNOT, OF COURSE, CONTEMPLATE EVERY POSSIBILITY OF THIS KIND. BUT PERHAPS THE COMPENSATION COMMISSION SHOULD HAVE SOME DISCRETION IN CONSIDERING EXCEPTIONAL CASES.

FOR EXAMPLE, A CASE MAY ARISE WHERE A FATHER IS SENTENCED TO PRISON FOR MURDERING HIS WIFE. THE OLDEST CHILD ASSUMES

RESPONSIBILITY FOR MAINTENANCE OF THE OTHER CHILDREN. SHOULD THE ELDEST CHILD BE ARBITRARILY EXCLUDED FROM A COMPENSATION AWARD? UNDER SECTION 16(a) OF S. 284 THIS CHILD WOULD BE EXCLUDED AS A "RELATIVE" OF THE OFFENDER.

THE LEGISLATURE MAY DESIRE TO ESTABLISH OR ALLOW THE COMMISSION TO ESTABLISH A TEST TO DETERMINE IF COMPENSATION SHOULD BE MADE IN UNUSUAL CASES, SUCH AS THE EXAMPLE MENTIONED, WHERE NORMALLY AN APPLICANT WOULD BE EXCLUDED. THIS MAY BE DIFFICULT TO SET OUT IN LANGUAGE, BUT I BELIEVE IT DESERVES FURTHER EXPLORATION.

EMERGENCY AWARDS

THERE IS ALSO ABSENT IN S. 284 PROVISION FOR THE GRANTING OF EMERGENCY AWARDS. EXPERIENCE IN GREAT BRITAIN INDICATES THIS MAY BE DESIRABLE. IN ITS SECOND REPORT THE BRITISH BOARD STATES, REGARDING THE 96 INTERIM AWARDS MADE,

"WE HAVE CONTINUED TO FIND IT A USEFUL PROVISION. IT NOT ONLY BENEFITS APPLICANTS, BUT ALSO ENABLES US TO DEFER MAKING A FINAL AWARD UNTIL THE APPLICANT'S PENSION OR GRATUITY HAS BEEN ASSESSED IN CASES COVERED BY THE NATIONAL INSURANCE INDUSTRIAL INJURIES SCHEME, SO THAT WE MAY CALCULATE THE AMOUNT OF PAYMENTS FROM A FINAL AWARD. IT IS ALSO A USEFUL POWER WHERE CHILDREN ARE CONCERNED, OR WHERE THE ULTIMATE EFFECT THE INJURIES WILL HAVE IS UNCERTAIN.

FOR INSTANCE, IN THE CASE OF BOY OF 9 WHO HAS BEEN BLINDED, WE HAVE MADE AN INTERIM AWARD AND ARE CONCERNING OURSELVES TO SEE THAT HE GETS AS GOOD AN EDUCATION AS POSSIBLE AND THAT ANYTHING WHICH WILL HELP TO MAKE LIFE EASIER FOR HIM IS PROVIDED." (P. 7)

IF THE LEGISLATURE DETERMINES THAT PROVISION SHOULD
ME MADE FOR EMERGENCY AWARDS, IT MAY WISH TO INCORPORATE AFTER SECTION
17 THE FOLLOWING LANGUAGE:

"IF IT APPEARS TO THE COMMISSION PRIOR TO TAKING
ACTION THAT (a) A CLAIM IS ONE WITH RESPECT TO
WHICH AN AWARD PROBABLY WILL BE MADE, AND (b)
UNDUE HARDSHIP WILL RESULT TO THE CLAIMANT IF
IMMEDIATE PAYMENT IS NOT MADE, THE COMMISSION
MAY MAKE AN EMERGENCY AWARD TO THE CLAIMANT
PENDING A FINAL DECISION IN THE CASE, PROVIDED
HOWEVER, THAT (a) THE AMOUNT OF SUCH EMERGENCY
AWARD SHALL NOT EXCEED FIVE HUNDRED DOLLARS,
(b) THE AMOUNT OF SUCH EMERGENCY AWARD SHALL
BE DEDUCTED FROM ANY FINAL AWARD MADE TO THE
CLAIMANT, AND (c) THE EXCESS OF THE AMOUNT OF
SUCH EMERGENCY AWARD OVER THE AMOUNT OF THE
FINAL AWARD, OR THE FULL AMOUNT OF THE EMERGENCY
AWARD IF NO FINAL AWARD IS MADE, SHALL BE REPAYED
BY THE CLAIMANT TO THE COMMISSION."

MINIMUM AND MAXIMUM AWARDS

AS I INDICATED EARLIER, UNDER SECTION 17 AN APPLICANT MUST SUFFER AT LEAST A MINIMUM LOSS OF \$500 TO BE ENTITLED TO AN AWARD. SINCE DRAFTING THIS REQUIREMENT, I HAVE COME TO BELIEVE THAT THE LEGISLATURE MAY WISH ALSO TO GIVE THE QUESTION OF MINIMUM AWARDS FURTHER CONSIDERATION. WHILE \$500 WAS ORIGINALLY SUGGESTED TO PROTECT AGAINST NUISANCE CLAIMS, IT MAY VERY WELL PROVE UNFAIR FOR SOME INDIVIDUALS THE BILL WAS DESIGNED TO PROTECT.

THE BRITISH COMPENSATION BOARD REPORTS THAT

"THE AVERAGE COMPENSATION PER CASE (\$893.) IS MUCH LOWER THAN WE HAD ANTICIPATED . . .

OUR EXPERIENCE TO DATE LEADS US TO CONCLUDE THAT INJURIES INFLICTED BY ASSAILANTS RARELY CAUSE PERMANENT INJURY OR LOSS OF FUTURE EARNING CAPACITY. THERE ARE . . .

A SMALL NUMBER OF CASES WHERE DEATH, BLINDNESS OR PERMANENT INCAPACITY RESULT AND IN THESE CASES SUBSTANTIAL AWARDS HAVE BEEN MADE."

(SECOND REPORT, P. 4).

A MINIMUM REQUIRED LOSS OF \$500 MAY ALSO RESULT IN ALL CLAIMS RECEIVING A MINIMUM AWARD OF \$500. THIS WAS NOT THE INTENT OF SUCH A REQUIREMENT. I THEREFORE RECOMMEND REDUCING THE AMOUNT TO \$100 AS IS PRESCRIBED IN NEW YORK STATE.

ALSO WITH A VIEW TOWARD ECONOMY, I BELIEVE WE MIGHT BETTER INAUGURATE THIS PROGRAM WITH A MAXIMUM AWARD SET AT \$15,000 RATHER THAN \$25,000.

REDUCTION OF AWARDS

SECTION 18 OF S. 284 PROVIDES FOR THE MITIGATION OF AWARDS. THE NEW YORK LAW IN THIS REGARD IS, I BELIEVE, CLEARER AND FAIRER. IT STATES THAT AWARDS SHALL BE REDUCED BY THE AMOUNT OF ANY PAYMENTS RECEIVED OR TO BE RECEIVED AS A RESULT OF THE INJURY

"(a) FROM OR ON BEHALF OF THE PERSON WHO COMMITTED THE CRIME, (b) UNDER INSURANCE PROGRAMS MANDATED BY LAW, (c) FROM PUBLIC FUNDS, (d) AS AN EMERGENCY AWARD . . . " AUTHORIZED UNDER THE NEW YORK ACT.

UNDER S. 284, IT IS CONCEIVABLE, FOR EXAMPLE, THAT THE COMMISSION COULD REDUCE AN AWARD BY AN AMOUNT RECEIVED BY A

VICTIM FROM A SPECIAL COMMUNITY FUND ESTABLISHED TO ASSIST THAT VICTIM. THE COMMISSION MAY ALSO BE FACED WITH THE CASE OF A MARGINAL WAGE EARNER WHO HAS REFRAINED FROM MATERIAL ENJOYMENTS AND HAS INVESTED HIS MONEY INSTEAD IN A VOLUNTARY INSURANCE PROGRAM. SHOULD PAYMENT FROM THIS MAN'S INSURANCE BE DEDUCTED FROM AN AWARD, WHEN NO SUCH DEDUCTIONS ARE POSSIBLE IN THE CASE OF A PERSON OF LIKE MEANS WHO SPENT HIS MONEY FOR MATERIAL ENJOYMENT?

SUBROGATION RIGHTS

MY FINAL OBSERVATION RELATES TO SECTION 20 OF S. 284 PERTAINING TO THE RIGHT OF THE STATE TO RECOVER AMOUNTS PAID TO A VICTIM. THERE IS OBVIOUS ERROR IN THE DRAFTING OF THE LANGUAGE WHICH MAY WELL BE THE FAULT OF MY OFFICE. IT SHOULD BE AMENDED SO THAT THE STATE WILL BE ABLE TO RECOVER WHAT IT HAS PAID THE CLAIMANT, NO MORE OR LESS, WHERE A THIRD PARTY ACTION IS INVOLVED.

ADDITIONALLY, HOWEVER, I BELIEVE SECTION 20 SHOULD REQUIRE AN APPLICANT TO COOPERATE WITH THE COMMISSION IN THE PRESENTATION OF A CASE, FAILING WHICH THE COMMISSION SHOULD HAVE THE RIGHT TO

THE PLIGHT OF THE VICTIM BE ACCEPTED AS AN UNFORTUNATE AND UNAVOIDABLE SACRIFICE FOR WHICH SOCIETY HAS NO RESPONSIBILITY?

I TRUST THE LEGISLATURE OF NEW JERSEY WILL RESPOND TO THE VICTIM OF VIOLENT CRIME WHO HAS TOO LONG REMAINED IN THE SHADOWS OF CRIMINAL JUSTICE AND HAS ESCAPED THE COMPASSIONATE ARM OF THIS MOST CIVILIZED OF ALL SOCIETIES. NOT ONLY DO WE OWE THESE INDIVIDUALS AN INDEMNITY, AS JEREMY BENTHAM SUGGESTED IN HIS TIME, BUT I BELIEVE WE HAVE THE CAPACITY AND, ABOVE ALL, WE LIVE IN AN ERA OF SOCIAL CONSCIOUSNESS WHICH IS ATTUNED TO SUCH HUMANITARIAN IDEALS.

NEW JERSEY CAN AND SHOULD REMAIN IN THE FOREFRONT WITH RESPECT TO THESE IDEALS. THE ESTABLISHMENT OF A PROGRAM TO COMPENSATE INNOCENT VICTIMS OF VIOLENT CRIMES WOULD BE FURTHER INDICATION OF OUR COMMITMENT TO PROGRESSIVE AND ENLIGHTENED GOVERNMENT.

THANK YOU, SENATOR.

SENATOR PARSEKIAN: There were two things that came to my mind when you were testifying, Mr. Altman - one, that we sometimes lose sight of where we are going in the very broad cycles of life and of government and of society. It was interesting to note that the historical development of criminal law started with compensation to victims of crime where, if you think about it, it really belongs. I guess we can both recall from our early law school studies that the individual who was injured or his family had a family mission recognized by Society to obtain compensation for the crime and that he or his family would go after the criminal or the criminal's family for that compensation, and then it developed into some societal attempt to help the victim.

MR. ALTMAN: This early philosophy was sidetracked during the Middle Ages and it has taken another five hundred years to put it back on its previous course, dating back to biblical times.

SENATOR PARSEKIAN: It is interesting too that it was in early England, the early Anglo-Saxon laws, that the changes started away from compensation of the victim to retribution and incarceration, but it was in England or New Zealand - which I equate - where the first modern thought comes for reverting to the original theme.

The second thing that occurred to me was an item I read in the paper three days ago about a 62-year old man who was assaulted by three hoodlums on a New York Street, and he had lye

thrown on his face and wound up in the hospital. I didn't get the followup whether he lived or died but I am sure he is scarred or blinded for life as Victor Riesel was. We all feel sorry for him but there is nothing we can do about it if we are in New Jersey. Do you have any personal observations?

MR. ALTMAN: Nothing more other than maybe we are a couple of hundred years overdue on it.

SENATOR PARSEKIAN: Thank you very much.

The Committee has been in touch with Professor Robert Childres of the Faculty of Law of New York University School of Law, Washington Square, New York, who has been a student of this program in New York and other states and has written on it in the professional journal. He wrote to the Committee on S-284 on a request for his analysis and he makes certain observations and I would like to read them into the record.

(Reading)

"In my opinion, your Senate Bill No. 284 is a good, but not an excellent attempt to meet the just needs of victims of criminally inflicted personal injury. I have eight specific criticisms, as follows:

"1. Your paragraph 4 appears to require a hearing before award in every case. No hearing is needed unless the person receiving the award is dissatisfied with the judgment of a staff man as to what the award should be.

"2. Your paragraph 6 is contrary to customary American administrative practice. Admittedly, the practice is changing in a few states. For myself, legislative distrust of the judiciary is insufficient reason to deny a victim his day in court.

"3. Your paragraph 14 d. allows compensation for 'pain and suffering.' This cannot be compensated: it is not a dollar loss. Admittedly, it is allowed at least in torts actions in

your courts. However, (1) it is there primarily allowed to expand recoveries so as to compensate for such disallowed items as attorneys' fees; and (2) public monies are not in those cases usually involved.

"4. In your paragraph 15 a, 'preclude' is much too strong a term, as is 'as soon as possible' in 15 b.

"5. Your paragraph 16 is, in my opinion, the worst in the bill. Why should children be excluded from compensation because, for example, their mother rather than a stranger kills their father? Unless you can answer that question, in my opinion good conscience requires that 16 be changed. 16 c. is either redundant of 10, or, in my opinion, wrong.

"6. With reference to 17, the first widow to receive workmen s compensation in New York State received it more than 50 years and, so far as I know, still is. Why should payments to a widow under Senate 284 stop, so long as the lost contributions are not replaced through re-marriage or otherwise?

"7. Under paragraph 18, do you intend to deduct, for example, proceeds from G.I. insurance policies? I submit that you should not. The best language I have seen excludes receipts 'mandated by law.'

"8. Your paragraph 20 is needlessly cumbersome. Compare the New York Law.

"My comments have been phrased in quite strict terms. May I therefore repeat that I think your bill is a good one. I congratulate you for taking action in a field in which no mass pressure requires it, and in which I assume you therefore are acting simply because you believe the cause is just. Lastly, I appreciate your requesting my comments and hope that all or some prove helpful.

"Yours sincerely,
Robert Childres."

It is interesting to note that the critique made by Professor Childres parallels the critique made by Attorney General Sills in his opinion, and a reading of the letter as against the testimony indicates that at least two minds that have studied the field agree on certain basic changes which

would seem warranted.

The next witness is Nathan Finkel, Assistant Prosecutor of Essex County.

N A T H A N F I N K E L: Good morning, Senator.

I am here this morning on behalf of Mr. Brendan T. Byrne, the Prosecutor of Essex County, who was unable to appear here personally due to a conflict in commitments.

First of all, I wish to state that Mr. Byrne is not unmindful of the plight of those who have been injured or victimized by crime. As the public prosecutor in our most populous community, we have seen people come before our courts as the complaining witness in criminal actions who have been injured superficially and who have been injured permanently and have seen the result not only upon the individual but also upon his family and his loved ones where there is no hope for compensation from the party responsible for inflicting those injuries. Mr. Byrne, of course, has developed an acute interest in this particular problem. He and his staff are presently engaged in the preparation of a documented study of this matter and that study will, of course, be made available at a future time when it is completed.

Finally, it appears to be agreed by all who have had the opportunity to view the situation, by public prosecutors, by some of our most distinguished jurists, by attorneys, and members of the community in general that the current status of our

society may be partly responsible for the situation which you now have under study and that, therefore, it is more than appropriate that some manner or form be found to assist the victims of crime such as those which have been discussed here this morning. Therefore, if there is any manner in which the Prosecutor of Essex County or his staff may assist you, we will, of course, make ourselves available. However, it is felt that the study which will be made by Mr. Byrne and his staff and which will be available in the future may be of some assistance to all who are concerned.

SENATOR PARSEKIAN: Mr. Finkel, I appreciate the fact that you and the Prosecutor of Essex are in the process of making a study which you will submit to the Committee and we would like very much to have it. Would you ask the Prosecutor to address himself in that study to a tally, if he would, of criminal cases in Essex County which in his judgment would have indicated eligibility under this bill for compensation.

We had testimony earlier of a study made in Trenton involving 105 crimes over a three-month period involving State Police and the City Police, and they learned that only nine of the 105 victims would have been eligible under the bill.

Now this is important because there is an initial reaction I have found among citizens who are for the bill or for the philosophy of the bill, fearing that there may be some tremendous cost involved. Also you might note that the

experience in Great Britain in the first 20 months of that system's operation indicated that of 1,505 cases in which awards were made, the total cost was \$1,142,000, which does not seem at all excessive. As the General indicated, he compared this with the cost in New York State of Workmen's Compensation Insurance for a year.

MR. FINKEL: Senator, does that figure of \$1,142,000 include the cost of the administration or is that just the total of the awards in Britain?

SENATOR PERSEKIAN: This was just the awards. They awarded precisely \$1,142,154. That would not include the administrative costs.

I am advised by counsel that the administrative cost in Great Britain averaged about \$200 per case. This would be a very important feature of the paper submitted by the Prosecutor and I wish you would especially ask him if he would address himself to it.

Do you have any other personal observations you wish to make, Mr. Finkel?

MR. FINKEL: Well, the only observation which I can make is based upon my experience as a public prosecutor, as Assistant United States Attorney, and also as Assistant Prosecutor of Essex County, and it is that the average injury which I have personally seen - and I am not speaking for Mr. Byrne or the rest of the office - has been a minor

injury in the sense that there has been a full recovery from either a stab wound or a gun shot wound. However, I can think of one or two cases where there have been severe injuries leaving some impairment of an arm, for example, where there has been a stab wound of the arm or of the leg with the residual pain and suffering, also pain and suffering residual from people who have been struck in the head and have been unable to return to work for a month or two months after being mugged or robbed on the street. Personally I feel that this is a very proper study to be made at this time in view of the problem which is being created for a person who is injured under these circumstances and especially a person who is not in a position, due to his education or sophistication or economic status, to have all the insurance coverage which is presently available and which would otherwise carry him through, such as insurance to cover his hospitalization, major medical, and to compensate him while he is out of work. That would be the total of my experience in this matter.

SENATOR PARSEKIAN: Do you have any specific instances in your experience that you can tell us about that might be of public interest?

MR. FINKEL: There are none that I can specifically recall because I don't know enough of the facts as to the plight of the individual offhand. I can think of one situation

where a schoolteacher became involved in an altercation away from school, not during school hours, and I know that he was hospitalized for some time, but here again, most school teachers are covered by Blue Cross and Blue Shield and they also are covered by the group policy of major medical coverage so that the effect upon him as an individual would not be as great as, for example, a man who has a job making sixty-five or seventy dollars a week as a trucker's assistant where he doesn't have the benefit of this coverage. But, as I say, offhand I do not have any facts and figures with me at the present time and I think that this type of statistic should be precisely documented in order to demonstrate whether there is a need or whether there is not a need for this type of coverage.

SENATOR PARSEKIAN: What is your personal opinion?

MR. FINKEL: As to this particular situation?

SENATOR PARSEKIAN: Yes.

MR. FINKEL: Well, personally, I feel there is a need for such coverage. However, I am not in a position at the present time to comment upon the bill, Senate 284, which is presently before your Committee as to whether or not this is the appropriate method for providing coverage for these people.

SENATOR PARSEKIAN: I remember a case in Newark some time ago of a baby being hit by a stray bullet during the commission of a crime. I don't recall the exact facts but I do

recall, I think we all do, the incidents we read in the press of the innocent pedestrian or motorist who catches a stray bullet while a policeman is trying to apprehend a robber.

MR. FINKEL: For example, the other night there was a situation of a woman riding in a bus struck by a stray bullet inadvertently fired by a Newark patrolman in a chase. This is the type of situation you have in mind, no doubt.

SENATOR PARSEKIAN: Yes.

MR. FINKEL: But here again you come down to the same questions: What other means of compensation are available? Is the city going to be responsible for the injury caused by the act of one of its patrolmen who may have acted with complete regard to third parties? Does the woman have any other source of coverage? Is she herself personally insured?

I think this is the whole thrust of this objection that the public may have to this type of coverage.

SENATOR PARSEKIAN: Thank you very much.

MR. FINKLE: Thank you very much, Senator.

SENATOR PARSEKIAN: Detective Hugh Langcaskey of the Trenton Police who is also Vice President of the New Jersey PBA.

I recall, Mr. Langcaskey, you testified at the Drinking and Driving Law Hearing.

MR. LANGCASKEY: Implied Consent, yes, sir.

SENATOR PARSEKIAN: Thanks very much for coming.

H U G H L A N G C A S K E Y: Good morning, Senator.
On behalf of the State PBA I am here to wholeheartedly
support Senate Bill 284.

We feel that this bill, if it becomes a reality,
becomes law, will greatly aid in law enforcement.

In listening to some of the other witnesses testify -
many times at the scene of a crime, such as a mugging,
attempted holdup, many of the witnesses would be compelled to
act if they thought they could receive compensation if they
were so injured.

Let me cite a case that happened about a week or
a week and a half ago here in the City of Trenton. A
policeman's brother was in a tavern when two holdup men came
in and he tried to get out the back door so he could summon
the police and as he did so he was shot. He may or may not
have Blue Cross. I happen to know the particular company he
works for. I don't think he has any other insurance, other
than Blue Cross, maybe major medical-surgical. This man
will be faced with the loss of compensation for his family
while he is incapacitated in the hospital. If, to my
knowledge, he has a limited Blue Cross policy he will also
be faced with a large hospital bill.

We feel that a good many people will aid policemen
and make more reliable witnesses when they are called upon
to do so.

As a police officer myself, I know that quite often I went to the scene of a crime and people are reluctant to tell you anything. They know it means loss of pay while they are at a hearing or at a trial in the county courts. And I also know that many victims of muggings are a little reluctant to tell you. They feel they've only lost a few dollars and may as well lose that few dollars as get involved in court and lose time off from work.

I may add that my organization represents possibly 95% of the policemen in the State of New Jersey and they are wholeheartedly in back of this Bill.

SENATOR PARSEKIAN: Detective, is there any reason that you know of, any enforcement reason, that would detract from the adoption of this Bill?

MR. LANGCASKEY: No, sir. As I said before, we feel it would greatly aid enforcement if such a bill as this were passed and signed into law.

SENATOR PARSEKIAN: There's no backlash to that theory, so to speak.

MR. LANGCASKEY: None that I know of, no, sir.

SENATOR PARSEKIAN: I am informed by Counsel that your observation is based on the experience in Great Britain where their March, 1966 report showed that after 20 months of operation they did find citizens more often assisting police officers in helping where crimes were being committed

since passage of the act. So it's apparent that you have some statistical alliance in your opinion.

MR. LANGCASKEY: The New Jersey State PBA is a member of the International Association of Police Conferences and we do have members from Great Britain come over to our conference here in the States. As a matter of fact, we are having a Board of Directors' meeting next week in Houston, Texas, and if any of those men come over I can obtain information from them. But they have said that a good many of the citizens over in Great Britain have come forward to aid the police over there since this law has been in force and the victims can receive compensation if they are injured in any bodily form or financial plight.

SENATOR PARSEKIAN: Thank you very much, Detective. Is there anything else you wanted to add?

MR. LANGCASKEY: Also we received the same information from New York City, that they have more people coming forward to aid them when they are in need of help, and appearing as witnesses also. People seem to realize that if they are injured or incapacitated in some way that they will receive some compensation for it.

That's about all I have to add.

SENATOR PARSEKIAN: I think there might be a little fundamental fairness involved in this law too. We are all paying taxes for various protections from governments -

county, municipal, state, federal - and we pay for police forces and all types of security for which expenditures are made, and if that doesn't work in protecting us, for whatever reason, either because the proper authority isn't around or whatever accidental reason, then it would seem that the taxes that we pay to protect ourselves should well go to assisting us when we are injured as a result of that breakdown, if you will, of a system that we have devised.

MR. LANGCASKEY: Well, it's true that we all pay taxes for police departments and fire departments and other such law enforcement agencies but it seems that we are on the bottom of the totem pole every time we go in there and try to get appropriations for salaries and to increase the size of the department. I can truthfully say --

SENATOR PARSEKIAN: Well, if I were a judge I would have to declare that irrelevant to the subject matter. But the point I make is that it would seem almost instinctively that one of the things we would want of a society that we joined as citizens, taxpaying citizens, would be to take care of us in the event that society is unable, for whatever reason, to protect us. I don't infer a breakdown in personnel, I mean a breakdown in just the system, the vastness of the system.

MR. LANGCASKEY: That's true.

SENATOR PARSEKIAN: Is there anything further that

you wish to present?

MR. LANGCASKEY: No, that's all, Senator.

SENATOR PARSEKIAN: Thank you very much.

Are there any other witnesses that wish to testify at these proceedings? (No response)

We have received word from Prosecutor Dolan of Middlesex County that he will submit written testimony in view of a court commitment that interfered this morning with his appearance.

We have also been in contact with Marvin E. Wolfgang who is a Sociologist and a Professor at the Department of Sociology of the University of Pennsylvania in Philadelphia. Professor Wolfgang has written in the professional journals on this problem, notably in the Minnesota Law Review in December of 1965, and the Committee asked for his critique on the Bill. He is submitting in writing a brief, as requested.

As there are no other witnesses present or who have indicated they will be present, I will declare these hearings closed.

(Hearing concluded)

BRODART, INC.	Cat. No. 23-221

BRODART, INC.

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