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California's New Crime Victim Compensation Statute

GILBERT GEIS*

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On July 1, 1974, California's program to provide public funds for certain victims of violent crime will begin to function under new legislation¹ which seeks to update, expand, and clarify the 1965 state crime victim compensation statute² and its later amendments.³ That 1965 California law represented the pioneering American thrust into the area of crime victim compensation and it followed closely on cognate efforts that had been launched in New Zealand in 1963⁴ and Great Britain in 1964.⁵ Since the Cali-

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1. CAL. Gov'T CODE §§ 13959-69 (West Supp. 1974).

2. Cal. Stats. 1965, ch. 1549 (repealed 1967).

3. Cal. Stats. 1967, ch. 1546, p. 3707, § 1 (repealed 1973). The most significant change in 1967 was the transfer of administration of the program from the State Department of Social Welfare to the State Board of Control.

4. New Zealand Criminal Injuries Compensation Act 1963, 12 Eliz. 2, No. 134. Cf., Weeks, *The New Zealand Criminal Injuries Compensation Scheme*, 43 S. CAL. L. REV. 107 (1970). In 1972, as an outgrowth of recommendations contained in the Woodhouse Report [ROYAL COMM'N OF IN-

ifornia enactment of almost a decade ago, nine other American states have established crime victim compensation programs.⁶ Each has been more generous than California was in regard to the amount of money that crime victims might receive,⁷ and most have been a good deal more sophisticated in spelling out the manner in which their compensation programs are to be operated.⁸

The ground-breaking California approach came under scrutiny when the federal Congress considered legislation to provide com-

QUIRY, COMPENSATION FOR PERSONAL INJURY IN NEW ZEALAND (1967)], New Zealand absorbed its crime victim compensation program into a comprehensive system to provide reparation to all injured persons regardless of the cause of injury. New Zealand Accident Compensation Act 1972, 21 Eliz. 2, No. 43. Cf., Szakats, *Community Responsibility for Accident Injuries: The New Zealand Accident Compensation Act*, 8 U. BRIT. COLUM. L. REV. 1 (1973); Palmer, *Compensation for Personal Injury: A Requiem for the Common Law in New Zealand*, 21 AM. J. COMP. L. 1 (1973).

5. COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE, CMND. NO. 2323 (1964), as amended 784 PARL. DEB., H.C. (5th ser., Written Answers) 100 (1969). See generally D. WILLIAMS, CRIMINAL INJURIES COMPENSATION (1972); Samuel, *Criminal Injuries Compensation Board*, 1973 CRIM. L. REV. 418. The British scheme was established on an *ex gratia* basis; on April 17, 1973, the Home Secretary announced the formation of a Working Party to review the program and to frame proposals for placing it on a statutory footing. CRIMINAL INJURIES COMPENSATION BOARD, NINTH REPORT, CMND. NO. 5468, at 8 (1973).

6. ALAS. STAT. § 18.67 (Supp. 1972); HAWAII REV. STAT. § 351-1 (1968); ILL. 1973 REGULAR SESSION, PUBLIC ACT 78-359; LA. 1972 REGULAR SESSION, ACT NO. 721; MD. ANN. CODE art. 26A (Supp. 1971); MASS. GEN. LAWS ANN. ch. 258A (1968); N.J. REV. STAT. § 52:4B (Supp. 1972); N.Y. EXEC. LAW §§ 620-635 (McKinney 1972); WASH. 1973 REGULAR SESSION, ch. 122. In 1972, Rhode Island enacted a crime victim compensation measure that was to take effect within 120 days following passage of federal legislation. GEN. LAWS OF R.I. § 12-25-1 (Supp. 1972). Provisions of the American laws in effect at the time he was writing, as well as those in New Zealand, Great Britain, Canada, and Australia, are reviewed in Lamborn, *Methods of Governmental Compensation of Victims of Crime*, 1972 U. ILL. L. FORUM 655. A tabular summary of the provisions of the laws in the first seven American states to have victim compensation laws can be found in Polish, *Rehabilitation of the Victims of Crime: An Overview*, 21 U.C.L.A. L. REV. 356-370 (1973).

7. The \$5,000 ceiling in California compared to a range of \$10,000 in New Jersey, Hawaii, Alaska, and Massachusetts up to \$45,000 in Maryland and \$50,000 in Louisiana. The Washington program sets no maximum, but will pay claimants in accordance with the provisions of its workman's compensation law.

8. Cf. Lamborn, *supra* note 6; Lamborn, *The Propriety of Governmental Compensation of Victims of Crime*, 41 GEO. WASH. L. REV. 446 (1973).

penetration for crime victims in the District of Columbia,⁹ and, on another occasion, when it considered granting 75 percent subventions to cover certain of the costs of state programs.¹⁰ State officials around the country, law review commentators, and others have also had an opportunity to make known their opinions in regard to the pioneering California effort in crime victim compensation. Such judgments have been uniformly critical and, at times, scathingly scornful. Among other things, the California program has been called "parsimonious,"¹¹ "token,"¹² "unfortunate,"¹³ "iniquitous,"¹⁴ "weak-kneed,"¹⁵ "a hesitant first step,"¹⁶ "just public relations surface treatment,"¹⁷ and of "slight importance."¹⁸ Perhaps the sharpest cut of all was the one inflicted by the assistant attorney general assigned to supervise investigations of claims made under the statute. He called the program "unfortunate," and then, in a burst of rhetoric, went on to observe: "I don't know how to describe the California program, except to say that never has so little been done for so few by so many unwilling people."¹⁹

THE 1973 VICTIM COMPENSATION LAW

The enactment during the 1973 legislative session²⁰ was, in part,

9. S. 2936, 91st Cong., 1st Sess. (1969). Cf. *Hearing on S.2936 Before the Senate Comm. on the District of Columbia*, 91st Cong., 1st Sess. (1970).

10. S. 300, 93d Cong., 1st Sess. (1973). Cf. *Hearings on S.16, S.33, S.750, S.1946, S.2087, S.2426, S.2748, S.2856, S.2994, and S.2995 Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary*, 92d Cong., 2d Sess. (1972).

11. D. KIRKHAM, *COMPENSATION FOR THE VICTIMS OF CRIME* 75 (1968).

12. Stone, A "Loaded Question": Should State Compensate Victims of Crime, *Philadelphia Inquirer*, Jan. 30, 1966, § 7, at 1, col. 1.

13. Childres, *Compensation for Criminally Inflicted Personal Injury*, 51 *MINN. L. REV.* 281 (1967).

14. Edwards, *Compensation to Victims of Crimes of Personal Violence*, 30 *FED. PROB.* 7 (June 1966).

15. *Wall St. J.*, Jan. 17, 1966, at 1, col. 1.

16. Culhane, *California Enacts Legislation to Aid Victims of Criminal Violence*, 18 *STAN. L. REV.* 271 (1965).

17. *Senate Hearing*, *supra* note 9, at 73 (Sen. Tydings).

18. *CORRECTIONAL ASS'N OF NEW YORK, RPT. OF AD HOC COMM. ON VICTIM COMPENSATION* 9 (1965).

19. Shank, in 1 *PROCEEDINGS, FIRST INTERNATIONAL CONFERENCE ON THE COMPENSATION TO INNOCENT VICTIMS OF VIOLENT CRIME* 161 (1968).

20. The 1973 law was preceded by a 1971 move to reform the victim compensation program that was aborted by a gubernatorial veto. The 1971 measure, co-sponsored by Assemblyman Moretti and Senator Moscone (A.B. 2552), would have boosted the maximum compensation from \$5,000 to \$25,000, liberalized qualifications, and streamlined the application process. The program was expected to be financed largely by having \$2 added to every court fine, excluding traffic fines. The measure was vetoed by Governor Reagan on the ground that it did not include an adequate "test

a response to the above-mentioned barrage of obloquy, and, in part, a response to the examples now available from actions taken in other jurisdictions.²¹ It was also the outcome of a forceful campaign by the Attorney General who, at the time, was seeking platform issues upon which to mount a possible campaign for Governor.²² The new law provides for, among other things, a change in the maximum possible award from \$5,000 to \$23,000, with the latter amount involving a \$10,000 ceiling on medical and/or burial expenses, \$10,000 on loss of wages or support, and \$3,000 for vocational rehabilitation. The provision of job training²³ for crime victims does not appear elsewhere in the American array of compensation programs.²⁴ The new California law also officially

of need" and that therefore it would result in "thousands of new claims." Long Beach Press-Telegram, Jan. 2, 1972, at 1, 24, col. 5-6.

21. Younger, *Commendable Words: A Critical Evaluation of California's Victim Compensation Law*, 7 BEVERLY HILLS B.A.J. 12, 16 (1973). See generally Walker, *The Diffusion of Innovations Among the American States*, 63 AM. POL. SCI. REV. 880 (1969).

22. In a series of public statements, Younger pointed out things such as the fact that there were 104,000 violent crimes in California during 1971-72, but only 698 claims for victim compensation had been filed and only 267 approved. "We literally step over the prostrate body of the victim to render assistance to the criminal who assaulted him," the Attorney General maintained. "The victim," he noted, "is lucky if he gets a ride to the hospital. He often has to pay for that." Long Beach Press, Jan. 4, 1973, at 1, col. 5-6. The Attorney General's interest in the legislation had been spurred by a letter from a Napa Valley crime victim to State Senator Peter H. Behr, and Behr's and Younger's joint discovery that there was very little the state could offer to alleviate the "devastating" consequences suffered by Behr's constituent. Telephone interview with Senator Behr, Sacramento, Feb. 22, 1974.

23. The State Board of Control remains uncertain exactly how to implement legislative intent in regard to this provision. One possibility is to turn the matter over to state vocational rehabilitation agencies; another is to allow the victims to pursue their own interests, and bill the Board for the costs. *Quare*: Do baby sitting expenses incurred while the victim is attending vocational rehabilitation courses constitute recoverable costs under this clause? Interviews with Eugene F. Veglia, secretary, and Richard A. Godegast, assistant to the secretary, State Board of Control, Sacramento, Feb. 7, 1974.

24. Job training awards are available in three Canadian provincial programs. See ALBERTA CRIMINAL INJURIES COMPENSATION ACT 1969, c. 23, § 142; BRITISH COLUMBIA CRIMINAL INJURIES COMPENSATION ACT 1972, c. 23, § 16; MANITOBA CRIMINAL INJURIES COMPENSATION ACT 1970, c. 56, § 13. The need for such training, as well as for counseling assistance and psychological help, has been pointed out by Fogelman, based on her investigation of the situation of 49 persons from Los Angeles County who had applied for victim compensation assistance during 1969-70. "Despite the anguished

changes the eligibility requirement for assistance from "need" to a showing of "serious financial hardship,"²⁵ a step that for all practical purposes had been taken administratively under the old law several years before being endorsed statutorily in the new measure. By failing to extend aid to crime victims regardless of their financial resources, however, California bypassed the more generous (and, many would argue, more just) examples of Hawaii, Massachusetts, and Washington which allow reparation regardless of the claimant's resources, providing that he or she has not recovered the victimization losses from other sources.

Particularly noteworthy in the revised victim compensation law is the provision that compensation may be accorded for injury or death sustained by the victim of a driver who violates any of four sections of the Vehicle Code.²⁶ These deal with hit-and-run behavior, felony drunk driving, misdemeanor drunk driving, and driving under the influence of narcotic drugs. Previously, California, in the manner of other jurisdictions in the United States with victim compensation laws, had restricted reparation to vehicular accidents in which injury or death was the consequence of the deliberate employment of an automobile, airplane, or boat as a weapon.²⁷

Other provisions of the new compensation statute include the extension of aid to residents (rather than, as before, only to domiciliaries) of California who are injured outside the state.²⁸ Attor-

need," she writes, "the complete lack of a viable system of social service to victims of crime in the state of California is made glaringly apparent by the results of this research study." S. Fogelman, *Compensation to Victims of Violence—The Forgotten Program* 47 (June 1971) (unpublished Master of Social Work thesis in the University of Southern California library). It was noted that "[e]mployment and training assistance was not forthcoming. There was very little or no help given those trying to re-enter the labor market. There was very little or no help given those who could no longer function in their previous occupation." *Id.* at 46-47. For a description of a program to provide social service aid to crime victims operated by the Department of Human Resources in Chicago see *TIME*, Aug. 7, 1972, at 78. Note too the comment of a senior assistant attorney general in the Washington State Department of Social and Health Services:

We think money solves everything. We're a mercantile, materialistic society. I propose a volunteer corps for [crime] victims to aid with housekeeping, transportation, and other services. *Seattle Times*, Dec. 14, 1972, at 27, col. 1-5.

25. The term "serious financial hardship," which appeared first in the New York statute, is also part of the Maryland law. For the manner in which it is interpreted in New York see Edelhertz, Geis, Chappell, & Sutton, *Public Compensation to Victims of Crime: A Survey of the New York Experience—Part II*, 9 *CRIM. L. BULL.* 101, 111 (1973).

26. *CAL. VEH. CODE* §§ 20001, 23101, 23102, 23106 (West 1973).

27. See generally Brooks, *Compensating the Victim of Crime: Should "Criminal Offense" Be Defined?*, 45 *N.Y. ST. B.J.* 561 (1973).

28. A better policy might have been to provide aid to residents of states which would offer reciprocal benefits to California visitors.

neys' fees are set at a maximum of \$500; previously, they had been 10 percent of the award, but since the maximum grant was \$5,000, the attorney was also limited to \$500 under the old law.²⁹ A minimum recoverable amount is included in the law for the first time, bringing the California victim compensation program in line in this regard with most other American jurisdictions. The minimum is set at whichever figure is lower: (a) \$100; or (b) 20 percent or more of the victim's net monthly income.³⁰ Largely dictated by the seemingly disproportionate costs of investigating smaller claims, the inclusion of the minimum award level, if experience elsewhere holds true,³¹ will result in inflated, fictitious amounts being listed more often on application forms, and/or higher charges by medical practitioners in order to render the victim eligible for consideration for assistance.

Some teeth may have been inserted into the new law with the provision that the Attorney General shall set standards to be followed by local law enforcement agencies in carrying out their statutory duty to inform victims of violent crimes of the existence of the compensation program.³² The law provides that police organizations may be required to file with the Attorney General "a description of the procedures adopted . . . to comply" with this obligation.³³ California had pioneered in the nation in 1965 by placing a duty to inform crime victims on functionaries in the crim-

29. About 35 percent of the claimants are represented by attorneys. Board of Control officials are somewhat surprised at the low rate of representation, since they regard the compensation for attorneys as generous in terms of the amount of work required to prosecute claims. Interview with Veglia and Godegast, *supra* note 23.

30. CAL. GOV'T CODE § 13965(3)(c) (West Supp. 1974).

31. Edelhertz et al., *supra* note 22, at 102.

32. One particular facet of foot-dragging in regard to publicizing victim compensation programs has been shrewdly explained by the former Assembly leader in New York who was largely responsible for passage of that state's victim compensation program:

Well, look how they publicized the lottery which is supposed to supplement the State's financing of education. And look how they advertise the new O.T.B. [Off-Track Betting]. *Everyone* knows about these programs; but, you see, they are money-making enterprises. Victim compensation, on the other hand, provides a service to the people and therefore costs the State money. To publicize it only costs them more. You have to understand that distinction, and that's why it hasn't been done. Edelhertz et al., *supra* note 22, Part I, at 42-3.

33. CAL. GOV'T CODE § 13968(c) (West Supp. 1974).

inal justice system. At that time, the task was given to the district attorneys. Their immediate response was to insist that the job was beyond the ability of their resources;³⁴ their next response was to muster whatever resources they could to launch a lobbying effort to see to it that this provision was excised from the statute.³⁵ That effort was in part a function of the district attorneys' concern that failure to notify a potential beneficiary might result in liability, though they had been given informal assurance by the Attorney General that all that was required of them was that they make the appropriate forms available to potential claimants.³⁶ In 1970, the district attorneys succeeded in having the duty to notify victims transferred to the police,³⁷ where it has remained as equally unheeded as it was before.³⁸ The new law at least offers an opportunity for an imaginative and insistent Attorney General to see to it that victims are routinely informed of the program's existence and told how they might benefit from it.

The 1973 law also includes a provision which seeks to breathe life into the almost-moribund Indemnity Fund³⁹ that was established by the 1965 law.⁴⁰ This Fund receives fines which may be

34. Thus, the chief deputy district attorney for Los Angeles County noted: "If we could just hire two or three people and sit down and read police reports and send out notices, we'd be all right." He added that he thought such an eventuality unlikely. *L.A. Times*, Nov. 30, 1967, at 22, col. 5.

35. A member of the state Attorney General's staff noted in 1968: "The D.A.'s have made a concerted action through their legislative liaison program to have themselves amended out of the statute." Shank, in 1 *PROCEEDINGS*, *supra* note 19, at 167.

36. Letter from Eugene F. Veglia, secretary, State Board of Control, to all district attorneys, quoted in Fogelman, *supra* note 24, at 7.

37. Cal. Stats. 1970, ch. 389, p. 801, § 1.

38. The 46 persons who responded to Fogelman's question on this subject indicated the following sources of their information about the existence of the victim compensation program: Lawyer (10); doctor (9); friends or relations (8); newspaper or radio (7); social worker (6); police (3); other (3). Fogelman, *supra* note 24, at 39. Similarly, the few newspaper stories which have provided information indicate that the source was other than law enforcement personnel. Note, *e.g.*, "Norma J. Bercy, owner of a boutique, beaten up in a robbery, saw notice of the program on a bulletin board at the U.C.L.A. hospital. But no police officer she talked to ever mentioned it." *L.A. Times*, July 14, 1972, at 14, col. 2-3.

39. The idea of the Indemnity Fund has a long historical pedigree, going back to Edward Livingston (1764-1836), who, in his model code for Louisiana, proposed that income from fines imposed as punishment be used toward compensation of private damages and injuries caused by the offender [2 *COMPLETE WORKS OF EDWARD LIVINGSTON*, art. 83, p. 31 (Patterson Smith ed. 1968)]. Livingston's idea was later incorporated into the penal code for British India, set forth by a special commission presided over by Thomas Macaulay (1800-1859). 4 *MISCELLANEOUS WORKS OF LORD MACAULAY* 190-193 (Lady Trevelyan ed. 1880).

40. The Fund has received the following amounts since it was estab-

levied by the courts in addition to other penalties in amounts that are required to be commensurate with the nature of the offense committed. The 1973 measure adds that in imposing the additional fine the courts should take into account the offense's "probable impact upon the victim" and that the extra fine is not to exceed \$10,000.⁴¹ Given the general failure of the Indemnity Fund to produce much revenue in the past, it would have seemed a better approach to have adopted the provision in the Maryland statute that the victim compensation program be financed in part by an override on fines and costs imposed by law on the defendant in all but motor vehicle and natural resource cases.⁴²

lished: 1968-69, \$5,728; 1969-70, \$5,080; 1970-71, \$1,414; 1971-72, \$50; 1972-73, nothing. CAL. LEGISLATURE, ANALYSIS OF THE BUDGET BILL BY THE LEGISLATIVE ANALYST, Items 49-50, p. 102, 1974 Regular Session. During 1973, according to radio reports, a fine of \$10,000, earmarked for the Indemnity Fund, was levied against a company judged criminally responsible for construction of a tunnel that collapsed and killed several men. Officers of the State Board of Control had neither received nor been able to learn anything further about this sum as of mid-February 1974. Note further a bill sponsored by Assemblyman Sieroty and three colleagues which provides that "prisoners engaged in productive work in a state correctional institution shall receive a minimum wage, with deductions of up to 35 percent for institutional costs and another 10 percent as a contribution to the state's victims of crime Indemnity Fund (A.B. 2386, 1973-74 Regular Session). The measure is not regarded as likely to pass. Cf., "In Africa . . . the importance of compensation being paid to the victims of offenses can be made the objective for certain types of prison labour or extramural work." M. CLINARD & D. ABBOTT, CRIME IN DEVELOPING COUNTRIES 226 (1973).

41. CAL. GOV'T CODE § 13967 (West Supp. 1974). A somewhat similar measure, providing that extra fines be levied to gain funds to support peace officers' training (CAL. GOV'T CODE § 13520) has been held not to be a denial of equal protection. *People v. Watson*, 92 Cal. Rptr. 860, 15 Cal. App. 3d 28 (1971), *cert. den.*, 404 U.S. 850 (1972). It was declared unconstitutional, however, as violative of provisions against excessive bail, to decree that the penalty plus the extra fine had to be paid before an alleged offender could be released on bail. *McDermott v. Superior Court of San Francisco*, 100 Cal. Rptr. 297, 493 P.2d 1161 (1973).

42. MD. ANN. CODE art. 26A § 17 (Supp. 1971). The Maryland Board reports the following amounts realized from the additional fine: 1969, \$118,948; 1970, \$135,438; 1971, \$21,969; 1972 (est.), \$141,000; 1973 (est.), \$145,000. MARYLAND CRIMINAL INJURIES COMPENSATION BOARD, 3D ANNUAL REPORT 10 (1972). Maryland's exclusion of motor vehicle and natural resource cases from the fine provisions is parallel to California's omission of motor vehicle and fish and game fines in securing peace officer training funds (*supra* note 43). That omission was held not to be arbitrary and capricious in *Hensley v. Peace Officers Training Fund*, 99 Cal. Rptr. 728, 22 Cal. App. 3d 933 (1972).

Other provisions in the new California law resemble those generally found in most American jurisdictions which have victim compensation statutes. Failure to cooperate with law enforcement officers, for instance, is deemed a ground for disqualification for consideration for an award. Negligence or provocation ("the nature of [the claimant's] involvement in events leading to the crime or the involvement of the persons whose injury or death gave rise to the application")⁴³ are also matters which can eliminate a claim. There are provisions in the law for payments to be made on either a lump sum or a periodical basis, though none for the setting up of an emergency fund, such as exists in several states, to aid victims with seemingly prima facie claims who face immediate financial burdens.⁴⁴ Subrogation rights accrue to the state under which it can attempt to recover compensation costs from the offender, presuming he is solvent.⁴⁵ Finally, though the statute does not specifically address the matter, the law is interpreted, as are all other compensation statutes, to allow reparations even though the offender may not have been apprehended, or tried, or convicted. Obviously, if a not guilty verdict has been rendered the burden on the claimant becomes heavier, but it is the nature of the victimizing act rather than the procedural response that is deemed most important in defining compensability. In addition, for victim compensation the level of proof is "preponderance of evidence"⁴⁶ rather than "beyond a reasonable doubt."

The new California victim compensation law is also notable for what it fails to legislate. It allows continuation of the administration of the crime victim compensation program in the State Board of Control, rather than following the example of the five state jurisdictions which have established independent administrative agencies to deal with crime victim compensation claims. Also, by including "serious financial hardship" as a prerequisite for compensation, the program fails to make all victims of violent crime and their dependents eligible for assistance if they incur unreimbursed medical bills or loss of earnings or support. Both the absence of a separate administrative board and the inclusion of the hardship requirement, as will be indicated in some detail below, will continue to limit the scope and the force of the California approach to victim

43. CAL. GOV'T CODE § 13964(c) (West Supp. 1974).

44. "Often, long before the State Board of Control acts on a claim, collection agencies for the county medical facilities are relentlessly and callously dunning the victims." Fogelman, *supra* note 24 at 45-46.

45. To date, no such action has been initiated. Polish, *supra* note 6, at 351.

46. CAL. GOV'T CODE § 13964 (West Supp. 1974).

compensation. On the positive side, the new law retains the state's hospitality to certain worthy claimants by not following the usual path of other states of specifically forbidding reparations to designated members of the offender's family. This kind of provision elsewhere has at times served to bar deserving victims from aid because of relationships that fell within the statutory definition, however meaningless they may have been at the time.⁴⁷

In summary, then, California, when it revised its victim compensation program last year, had had eight years experience with the older measure. It had reaped the public relations reward of being the first jurisdiction in the United States to enter the crime victim compensation field, and had felt the sting of commentators who insisted that this initial effort was pathetically inadequate and inept. For many persons, of course, including some legislators, any victim compensation program was worse than none at all, and by this standard the truncated California effort could be regarded as more acceptable than any elegant and elaborate plan favored by its critics. Nevertheless, if proponents of the compensation measure are to be taken at their word, their commitment had been to deal with the needs of crime victims in as decent and efficacious a manner as the limitations of public funding would allow. It does not seem unreasonable to hold the California legislature to high standards of performance in regard to crime victims, given the state's relative affluence and its deserved reputation for responsiveness to the needs of its population. By 1973, when the new California victim compensation measure was rewritten, a considerable number of programs existed throughout the world and thus, the measure's sponsors could draw upon a rather large body of information and example from which to fashion a greatly im-

47. Note, for instance, the following Maryland Criminal Injuries Compensation Board decision:

Claim filed on behalf of two infant claimants by their mother. Claimants' mother was the first wife of their father, the victim. Claimants' father was shot and killed by his second wife, the infants' stepmother. Section 5(6)(b) and 2(d)(1) of Article 26A of the Maryland Annotated Code together exclude members of the family of a person who is criminally responsible for a crime from becoming eligible to receive an award under our statute. Since the infant claimants are within the third degree of affinity to the assailant, we find the infants not to be eligible to receive an award growing out of this claim. The claim is, therefore, disallowed. MARYLAND CRIMINAL INJURIES COMPENSATION BOARD, 1ST ANNUAL REPORT 16, Case 42-D-69 (1969).

proved effort. That the result falls far short of matching the best of the programs mounted elsewhere in the country undoubtedly is a function of a mixture of considerations, including, perhaps, a lack of legislative commitment to such a goal, a defined political necessity, and inertia. Circumstances and motivations such as these are arguable, but some of the particularly troublesome shortcomings of the 1973 legislation, in terms of providing satisfactory assistance to crime victims, seem clear enough.

ADMINISTRATION OF VICTIM COMPENSATION

The State Board of Control, which will continue to administer the victim compensation program, inherited the task in 1967 under particularly inauspicious circumstances. It seems fair to say that the Board's extremely adroit and relatively efficient handling of its responsibility for the measure changed what at that time was a skeletal mandate and an impoverished condition of fiscal support into a more responsive and flourishing (the annual budget for crime victim compensation is now approaching the \$2 million mark) operation. Nonetheless, important questions exist concerning the ability of the Board to handle adequately the increased caseload that will likely result from the new provisions, and to meet satisfactorily the sometimes intricate issues of judgment involved in interpreting the compensation measure fairly.

A tracing of the route by which crime victim compensation made its way into the domain of the Board of Control places the matter into better perspective.

The Beginning—S.B. 1057 (1965)

A press release from the office of State Senator J. Eugene McAteer, dated 13 April 1965, represented the first public notification of the move in California toward establishment of a crime victim compensation program. About half of the announcement was devoted to analogies between the benevolent treatment afforded the offender and the harsh consequences visited upon the crime victim. The remainder contained a panegyric to Judge Francis McCarty of the San Francisco Superior Court, the man who had suggested the idea of a compensation program to McAteer.⁴⁸

48. The press release read in part:

[A] bill has been introduced at the suggestion of Judge McCarty. . . . The Judge and I have been friends since childhood and I have always admired his compassion and deep concern for his fellow man. He is a great credit to the legal profession and bench. In a recent letter to me, Judge McCarty outlined his concern in this matter and detailed some of the costs to the State

The letter to McAteer from Judge McCarty, written eleven days earlier, (which provides some idea of the haste with which the measure was drawn), told of a case that triggered the Judge's interest in victim compensation. The letter also included a nice catch phrase ("I propose dollars for decency as well as dollars for delinquency") and the hint that crime victim compensation was a politically advantageous measure to back ("I made mention of this injustice to victims at a criminal law seminar at the Fairmont last fall . . . I have yet to find anyone critical of the proposal").⁴⁹

Further details of the origin of his interest in crime victim compensation were supplied by Judge McCarty in 1966.⁵⁰ The case that aroused him, Judge McCarty noted, had come before his court on June 27, 1962. He was to sentence an 18-year-old male for a knockdown purse snatch against a 50-year-old woman. The victim was hospitalized for eleven days, and ran up a \$410 hospital charge. Her doctor's bill at the time of the hearing was \$175. All told, the probation report noted, these charges plus her x-ray expenses, her loss of earnings, and similar costs ensuing from the crime, totaled \$1,285. "The injustice of a 50-year-old, unmarried woman having to pay out of her life savings this amount of money shocked me," Judge McCarty noted.⁵¹

The statute that emerged from the concerns of McCarty and McAteer⁵² was a function of legislative compromises that seemed necessary at the time if any law at all was to be enacted. For one thing, administration of the new program had to be located in an existing agency, since formation of an independent agency would have been an alternative that McAteer regarded as unpalatable to cost-conscious legislators. McAteer chose to assign the task of operating crime victim compensation to the State Department of Social Welfare. Later, in early 1966, under heavy attack from academics during a nationwide television program, McAteer would defend his choice in the following terms:

We had to place it somewhere. This particular department in California has for years had a great deal of association with stand-

for detaining and caring for criminals. Press release, J. Eugene McAteer, Apr. 13, 1965.

49. Letter from Francis McCarty to J. Eugene McAteer, Apr. 1, 1965.

50. Letter from Francis McCarty to Gilbert Geis, Mar. 3, 1966.

51. *Id.*

52. Cal. Stats. 1965, ch. 1549 (repealed 1967).

ards, so we gave it to them. It is entirely possible that we may . . . give it to the workmen's compensation people. We are not sure exactly where it will rest eventually, but we had to place it somewhere.⁵³

Harassed by critics on the panel, McAteer insisted that while what he had accomplished might not be perfect, it was a good deal better than nothing. "What our bill does—in a preliminary form, I agree—is to get California on the road of this great social venture."⁵⁴ An inference that the \$100,000 appropriation was totally inadequate drew the remark that it was "\$100,000 more than any other state has made so far in this particular field."⁵⁵ The suggestion that a good welfare program would make victim compensation in California a redundant effort "rather amuses me," McAteer said, because 25 states were going to take his bill and "duplicate it word for word."⁵⁶ Finally, McAteer lashed out at what he seemed to regard as nit-picking by antagonists who, without responsibility for social policy, were spending their time assailing hard-won political gains:

We had to take bold steps. We may have to retreat. We may have to retrench in some of our legislation, but we just can't sit still and wait for reports. You can't sit still and wait for testimony and take miles and miles of tape recordings. You have to do things.⁵⁷

The Welfare Interlude: 1965-67

The California Department of Social Welfare, handed a task that it had neither asked for nor wanted, turned truculent in its administration of the victim compensation measure. In a 1965 interview, the Director of the Department declared that he believed the program to have been "improperly placed" and quoted what he reported to be the view of the department lawyers, that the victim compensation bill was "one of the worst drawn they had ever seen."⁵⁸

53. WNBC Television, *The Open Mind*, Transcript of "Violence, Victims, Compensation!", Feb. 23, 1966, at 41.

54. *Id.* at 4.

55. *Id.* at 6.

56. *Id.* at 17. McAteer was either misinformed or thinking wishfully. A measure similar to his was introduced only in Pennsylvania (H.B. 2136, 1965 Gen. Assembly), where it failed of enactment.

57. WNBC Television, *supra* note 53, at 38.

58. Interview with J.M. Wedemeyer by Gilbert Geis, Sacramento, Oct. 7, 1965. An assistant director of the Department told a newspaper reporter that crime victim compensation "violates our whole philosophy." The reporter thought that "giving funds to someone not a pauper" was making welfare officials "uneasy." N.Y. Herald-Tribune, Dec. 27, 1965, at 18, col. 2.

The legislation was, indeed, both laconic and inordinately vague. It provided an appropriation of \$100,000 for the 1965-66 fiscal year for crime victims "if there is need of such aid." The sum resulted in the establishment by the Department of Social Welfare of a \$5,000 ceiling on awards, an amount which would cover only twenty families a year, if they qualified for the full payment.

The welfare department was charged with establishing criteria for eligibility for compensation which "shall be substantially the same as those provided for aid to families with dependent children, provided, however, that aid shall be paid regardless of whether or not the applicant meets the property qualifications prescribed for that program."⁵⁹ The first regulations issued by the Department⁶⁰ made certain, as one commentator put it, "that victims in California will collect from the state at about the rate snowballs accumulate in Death Valley."⁶¹ Application for compensation (the program was dubbed AVCV—Aid to Victims of Crimes of Violence) were to be processed by county welfare departments in the same manner as applications for Aid to Families with Dependent Children (AFDC). Property valued at \$15,000 would automatically exclude its holder from compensation. For a family of four, an income of \$239 a month or more would also preclude compensation.⁶²

In practice, all of the Cassandra-like statements about the likely consequences of including crime victim compensation in the welfare realm proved well founded.⁶³ Based on interviews with sev-

59. Cal. Stats. 1965, ch. 1549 (repealed 1967).

60. Cal. Dept. Social Welfare, Dept. Bull. No. 648 (AFDC-AVCV), Dec. 8, 1965).

61. San Gabriel (Cal.) Daily Tribune, Dec. 27, 1966, at 18, col. 3-4.

62. Cal. Dept. Social Welfare, *supra* note 60. Immediate dispute broke out concerning the restriction of victim compensation to surviving children and families with children. McAteer met with the Department Director, who assured him that the regulations would be altered, "if legally possible." San Gabriel Daily Tribune, *supra* note 61. By February, changes had been made to embrace both single adults and adult dependents of victims within AVCV. Cal. Dept. Social Welfare, Dept. Bull. No. 648 (AFDC-AVCV) (Revised Feb. 10, 1966). But the Department still didn't think much of the whole thing: The \$100,000 appropriation, a Department spokesman noted, "is like telling us to go out and buy a steak and giving us 35 cents to do it with." San Gabriel Valley Tribune, *supra* note 61.

63. A Wisconsin legislative analyst, commenting on the California approach to victim compensation, noted that "[t]he obvious argument for this kind of program is, of course, that public funds should only go to

eral dozen recipients of aid under the welfare run victim compensation program, one of the present authors summarized the situation in a report for the National Commission on the Causes and Prevention of Violence:

[A]pplicants for compensation were handled in essentially the same manner as persons applying for welfare assistance, being subject to most of the indignities traditionally associated with state aid: suspicion regarding the veracity of their claim, overlong delays in processing papers, excessive waiting periods in inhospitable offices, condescension and pressures pushing toward an early return to work and cancellation of benefits.⁶⁴

those who are in considerable need—and even in those cases, it should be given sparingly.” WISC. LEGIS. REF. BUR., COMPENSATION FOR VICTIMS OF CRIME 16 (Res. Bull. 66-1, July 1966). This philosophical rationale represents about the best that would ever be said about the welfare emphasis in crime victim compensation in California. Most comments were bitingly critical. “[W]e believe that the program ought to be divorced from the welfare stigma or aura,” the report of the New York Young Republican Club noted, commenting on the California law. THE VICTIM 16 (Oct. 4, 1965). When a welfare system is used, a magazine of opinion noted editorially, “the aid becomes charity to the unfortunate when in fact the crime is society’s misfortune as well.” *Aiding the Victim*, 38 COMMONWEAL 139 (Nov. 5, 1965). In Massachusetts, a legislative committee insisted that “[c]ompensation is not a handout; it is restitution,” and went on to spell out its own philosophy:

Victims of violent crime simply do not come from one income group. Nor do the resulting misfortunes hit only those with small income. Loss of job, enormous medical expenses, disruption of normal life, pain and suffering are universal in their destruction. To force a person who has suffered all or any of these misfortunes to accept the stigma of welfare is totally unjustified. MASS. SPECIAL COMM’N ON THE COMPENSATION OF VICTIMS OF VIOLENT CRIME, REPORT 15 (House No. 5151, July 1967).

The same argument was put forward by the Dean of the Yale Law School, who maintained that “[i]f you’re hit by an auto, your compensation isn’t based on financial need,” and “it shouldn’t be any different when you’re assaulted by a thug.” Wall St. J., Aug. 26, 1970, at 1, col. 1.

This viewpoint was echoed by virtually every commentator. In Illinois, a legislative study commission recommended that the state try to establish “something more closely resembling real compensation, not just another form of welfare dole.” Wall St. J., Jan. 17, 1966, at 1, col. 8. Abner Mikva, one of the framers of the Illinois legislative report, took pains to impress on a U.S. Senate hearing the idea that federal compensation should “not be another adjunct to the welfare system.” *Hearings on S. 16*, *supra* note 10, at 40.

The reasons for this concern, both in theory, and in fact, as developments in California demonstrated, stemmed from the belief that, to use Judge Bazelon’s phrasing, “charity is an attempt by the well-fed to feed the hungry in a very unfriendly fashion, as if the giver might at any moment change his mind and gobble up the morsel himself.” D. BAZELON, POWER IN AMERICA 41 (1967). The welfare system has been labelled “a monster bureaucracy that dehumanizes its clients,” N.Y. Times, Mar. 3, 1966, at 24, col. 1, and been said to be marked by “condescension and contempt” on the part of its workers toward the poor, N.Y. Times, Feb. 20, 1966, at 36, col. 1-2.

64. Geis, *Compensation for Victims of Violent Crime*, in NAT’L COMM’N

Legislative Action: 1967

The disenchantment of Senator McAteer with the running of the crime victim compensation program by the State Department of Social Welfare spelled the end to this episode in the history of the nation's first law. "There is evidence," McAteer observed early in 1967, "that despite their low incomes, many crime victims resent being treated like welfare cases."⁶⁵ Senator McAteer did not want to be bothered, however, by having to take a comprehensive look at victim compensation; he merely wanted to get rid of the welfare stigma.⁶⁶ His new bill, introduced in 1967, established the ceiling on compensation at \$5,000 and explicitly settled on "need" as the basis for compensation. Claims were now to be handled by the State Board of Control after they had been investigated by the Attorney General's office.⁶⁷ McAteer, imperious, brusque, and dis-

ON THE CAUSES & PREVENTION OF VIOLENCE, 14 CRIMES OF VIOLENCE 1559, 1580 (1969). There was only one mild disclaimer from these judgments, and it was more wistful than critical. Don Green, a legislative intern who was drafting a bill that would relocate the administrative home of victim compensation, noted that "people are reluctant to process a claim through a welfare program," and then added: "It's unfortunate, because it actually could have heightened the status of welfare." *Sacramento Bee*, Sept. 13, 1967, at 2, col. 3.

65. *Sacramento Bee*, *supra* note 64.

66. At a fund-raising dinner for McAteer about this time, a brochure distributed to guests praised him as a "Man of Action," citing victim compensation as one of eight achievements fortifying that claim. McAteer was grooming himself for a run at the office of Mayor of San Francisco, and it would not do to have a program that he would highlight in his campaign tainted.

67. Cal. Stats. 1967, ch. 1546, p. 3707, § 1 (repealed 1973). Another bill, considerably more far-reaching than that offered by McAteer, had been prepared in the office of Jesse Unruh, Speaker of the Assembly. It called for the creation of a five-man Victim Compensation Commission, including at least one representative with social welfare administrative experience, one with medical training, and two with legal experience. At least one member of the Commission would be a woman. Also included was a provision for compensation and support for a child born of a sexual offense committed against the mother, and an elaborate system of judicial appeal if a claimant felt that a Commission decision did not meet the requirement of the law. Awards could be made up to a ceiling of \$25,000. Unruh's office, however, largely for reasons deemed to represent good political strategy (for the Speaker himself was readying for what would prove to be an unsuccessful attempt to unseat Governor Reagan), decided that it would be unwise to invade a legislative realm already carved out by Senator McAteer, and his office abandoned its efforts to seek passage of this comprehensive measure.

courteous, particularly with civil servants from the Attorney General's office who complained that he was saddling them with new duties without providing additional resources, easily rammed his measure through its initial hearings in the Senate Committee on Public Health and Safety.⁶⁸ After the Senator's unexpected death in May, 1967, the measure was picked up by his colleague from San Francisco, George Moscone. Moscone guided the bill through additional hearings and minor amendments to final passage at the end of the 1967 legislative session.

The Department of Social Welfare never formally accounted for the number and kinds of cases which ultimately received funds from the AVCV program, nor did the Department ever summarize its experiences or indicate its recommendations regarding the program it had shepherded so reluctantly for almost 18 months. Further, no roster of recipients was compiled, because Department regulations provided that compensation claimants, like welfare clients, not be identified by name. Perhaps the ultimate assessment of the welfare episode that ended in 1967 can be found in the fact that the case that had inspired Judge McCarty to seek the legislation—that of the woman who had appeared in court before him as a crime victim—was one of many of those involving Californians who in no way could receive assistance from the restrictive and limited California compensation approach.

The Board of Control: 1967—

The Assistant Attorney General placed in charge of developing the cases that would be reviewed by the State Board of Control under its new mandate indicated in an early period of his work that his office had no keener enthusiasm for its mission than its predecessor had shown. "We were reluctant," he noted. "[W]e took it only because of Senator McAteer's position and preeminence in the Legislature."⁶⁹ His description of the contents of the program he had inherited, as he spoke with administrators of other crime compensation organizations around the country, conveyed nicely the feeling of California authorities regarding the quality of their legislation. The California bill, he noted, "more or less incorporates in a half-hearted fashion most of the rest of the provisions [found elsewhere]."⁷⁰

Location of the victim compensation program in the State Board

68. One of the present authors (Geis) was at the hearing, and the textual observations are based on notes made at the time.

69. Shank, in 1 PROCEEDINGS, *supra* note 19, at 163-164.

70. *Id.* at 164.

of Control was in many ways an obvious strategy. The Board had an existing membership: the State Director of Finance (now the Director of General Services), the State Controller, and one member appointed by the Governor.⁷¹ It had developed some expertise in adjudicating fiscal issues, since it was charged with handling claims against the State.⁷² Equally or more importantly, the Board of Control already had some experience with operation of the Good Samaritan program, which had been enacted as a companion measure to the first victim compensation scheme.⁷³ Under the Good Samaritan law, the Board made recommendations to be approved by the legislature.⁷⁴ No showing of need is required to qualify for Good Samaritan aid, only the demonstration that the applicant had been injured while trying to repress criminal activity.⁷⁵

Despite the early misgivings, the Board of Control did a better than workmanlike job in managing the victim compensation program. In addition to the Board's record, the continued location of the program under its aegis by the terms of the 1973 law was

71. CAL. GOV'T CODE § 13900-01 (West 1973).

72. CAL. GOV'T CODE § 900.2 (West 1973).

73. CAL. PENAL CODE §§ 13600-03 (West 1963); now CAL. GOV'T CODE §§ 13970-74 (West Supp. 1974). See generally Holland, *The Good Samaritan Laws: A Reappraisal*, 16 J. PUBLIC LAW 128 (1967).

74. This procedure was changed effective July 1, 1972, when both the victim compensation and the Good Samaritan programs were budgeted together.

75. The number of applicants for Good Samaritan assistance has increased, though rather gradually, as the program becomes better known. There were six awards made, involving \$10,678 (about \$1,800 an award), by September 1967, some two years after the program had started. Sacramento Bee, Sept. 13, 1967, at 14, col. 3. The April 1971 cumulative total showed 32 awards involving \$137,000 (an average of about \$4,300 each award). The increase in the average figure was largely a function of a single grant of \$79,500 to a man shot and paralyzed while trying to prevent a husband from killing his wife. [*Public Pay for Crime Victims: An Idea that Is Spreading*, 70 U.S. NEWS & WORLD REP. 42 (Apr. 5, 1971)].

Judgment on the California Good Samaritan statute by those responsible for its operation is that it provides a real and (probably more importantly) a symbolic indication of state concern for proper citizen behavior and the sometimes unfortunate consequences of such behavior—and at a relatively small cost. The major recommendation for change in the law was that proposed by Alan Cranston during his campaign for reelection as State Controller in 1966. Cranston said that if he won (he lost), he would introduce a measure to expand the Good Samaritan concept to provide assistance to citizens injured while going to the aid of others in non-criminal as well as criminal situations. L.A. Times, Nov. 2, 1966, p. 21, col. 4.

attributable to at least two major considerations, according to persons familiar with the thinking and strategy that underlay the new measure. First, as the sponsor of the bill has noted,⁷⁶ it seemed much more likely that a measure would gain legislative approval if it appeared in the nature of an updating and refinement of an existing program rather than as a drastic reformation and reorganization. Legislators appear to be particularly suspicious of the novel, and particularly concerned with having things fit into pre-ordained slots with preexisting kinds of rationales for their being. Second, there has been a long-standing resistance in the California legislature to the creation of new administrative agencies.⁷⁷ Retrospection is apt to remind legislators of examples of fledgling, seemingly encapsulated programs which began in very small ways, but soon grew into empires, and became impossible to trim or contain once there had developed a strong vested interest of administrators and staff and a politically powerful constituency.

In these terms, the State Board of Control was a "safer" place to locate the crime victim compensation program. Each of its three members have many responsibilities elsewhere, and these could be counted on to keep them from making a burgeoning commitment to victim compensation. Thus, for example, the State Controller has from the beginning given over his place at Board meetings dealing with victim compensation to a member of his staff, preferring to concentrate his time and energy on other mandated duties of his office.

It seems apparent, nonetheless, that sooner or later the victim compensation program will overwhelm the present resources of the State Board of Control administrative staff as well as monopolize much of the time of the three statutory members who now hold the public hearings at which decisions on applications are rendered. Even now the crime victimization program has begun for the Board of Control staff to be "the tail that wags the dog."⁷⁸ Its business occupies about one-third of the time of the eleven-member staff, in addition to taking what probably is the equivalent of three full-time investigative positions in the Attorney General's office.

Appendix 1 provides an indication of the caseload with which the Board works. It will be noted that the budget has grown from less than \$100,000 in the first year of the program to more than

76. Telephone interview with State Senator Peter H. Behr, Sacramento, Feb. 22, 1974.

77. *Id.*

78. Interview with Eugene F. Veglia, Secretary, State Board of Control, Sacramento, Feb. 7, 1974.

\$1 million during only the first seven months of the 1973 fiscal year. The backlog of cases, it should be observed, represents more than half a year's work, a telling commentary on the Board's present ability to handle its business expeditiously.

The more liberal financial awards possible under the 1973 law will probably increase the number of applications, though such a rise could be offset somewhat by the elimination of smaller claims because of the minimum award figure now present in the statute. In New York, with about the same provisions as those in the new California law, there were 1,762 claims filed during 1972,⁷⁹ compared to 1,081 in California. If California were to reach the New York level, this would represent an increase of 63 percent over the present caseload. Present arrangements seem quite inadequate for handling this number of claims satisfactorily. The Board now meets twice a month, with usually three or four meetings taking place in Sacramento and the fourth in Los Angeles. Faced with about 40 cases for each session in Sacramento and about double that number in Los Angeles, Board members usually scan the materials provided by the Board staff the night before, raise occasional questions, and move on rapidly. About 25 percent of the claimants appear personally for the Sacramento hearings, and about 85 percent for the Los Angeles hearings. Eighty cases in eight hours, given the Los Angeles caseload, allows an average of six minutes for each case. In New York, there are five fulltime members of the Criminal Injuries Compensation Board⁸⁰, and a fulltime staff of 22 persons. It might also be noted that the separation of claim investigators from the Board in California creates

79. N.Y. CRIME VICTIMS COMPENSATION BOARD, 6TH ANNUAL REPORT 5 (1973).

80. It is possible that there may be some "padding" and "fat" in the New York operation. An investigative report by a newspaper reporter indicated that "seldom-show" patronage jobs which placed political appointees on boards, commissions, and authorities were costing New York state more than \$2 million annually. Many state jobholders with salaries in the \$30,000 to \$40,000 bracket were found by reporters in their private offices in banks, insurance companies and law firms during normal working hours, and only a handful were reached at their state jobs. The report explicitly noted, however, that although "the Crime Victims Compensation Board . . . [has] many political appointees, it is apparent that most of them do substantial work for the state." N.Y. Times, Feb. 11, 1974, at 1, 58, col. 5.

the possibility of failure of coordination, given no single locale of control over the crime victim compensation program.

In addition, since there is no central fulltime authority charged solely with the task of administering the victim compensation program, there are no spokesmen who can clearly be identified with the effort. In New York, a former member of the legislature and a former Commissioner of Correction are among the Board members; both are well attuned to the political climate of the state, and both have "names" which can generate the kind of mass media exposure necessary to publicize their program.⁸¹

Responses by Los Angeles County applicants to the State Board of Control to a questionnaire provide empirical support for the view that the legislature was short-sighted in not creating separate housing for the victim compensation program, or, at least, in not providing much greater resources for the State Board of Control to handle the program, including one or more persons with responsibility only for its operation. The 39 respondents in the study represented ten persons who had been granted compensation, ten who had been denied it, and 19 whose cases were still pending. In about three quarters of the cases, the applicants themselves were the crime victims. They were about evenly divided among men and women, and their average age was 42 years. Summarizing the observations of the sample regarding the crime victim compensation program, Sylvia Fogelman, the originator of the questionnaire, thought that they "revealed a great deal of dissatisfaction."⁸² She grouped their responses, with illustrations, into three major categories:⁸³

(1) Many persons indicated that the basic concept of victim compensation was one which they heartily endorsed, but that there were flaws in the present system of implementation in terms of a slow and cumbersome bureaucracy;

(2) Persons often commented on what they saw as "covert" or "mysterious" factors involved in the program administration, and about the difficulty of communication with the Board of Control;

(3) Some respondents indicated angrily that they had been treated poorly either during the investigation or during the hearing on their claims.

81. Boards elsewhere have also attracted outstanding persons to carry on their work. Thus, in Maryland, George Beall, the U.S. Attorney responsible for the prosecution of the case against former Vice President Agnew, is a former member of the Maryland Criminal Injuries Compensation Board.

82. Fogelman, *supra* note 24, at 40.

83. *Id.* at 40-43.

Among the recommendations for improvement of the program offered by the respondents, the following are noteworthy: (1) Relieve victims of property tax; (2) Hold hearings in the city in which the applicant resides; (3) Revise forms to be more direct; (4) Change the concept of compensation so that it becomes a right for all innocent victims, not just the "needy"; (5) Assign members of the Board who "relate" to victims; (6) Have the hearings as soon as the victim needs help so that if he needs advice as well as money, it might be forthcoming; (7) Explain what the program covers in layman's terms so that people can somewhat predetermine their eligibility; (8) Extend the publicity on the program; and (9) Give the victim, if needed, at least what the criminal receives in support, and legal, medical, and psychological help.⁸⁴

"SERIOUS FINANCIAL HARDSHIP"

In incorporating the requirement that a victim or his or her survivors must show "serious financial hardship" in order to qualify for victim compensation,⁸⁵ the California legislature moved away from the earlier "need" requirement, with its overtones of charity and welfare, into a semantic realm which, as we have indicated earlier, had already been visited by other state jurisdictions. It appears particularly unfortunate that California would adopt the standard for eligibility that the Crime Victims Compensation Board in New York, the state where the criterion had originated, was so strenuously attempting to jettison. Each annual report of the New York Board bemoans the problems involved in defining "serious financial hardship" in a just manner,⁸⁶ and interviews with

84. *Id.* at 43-44.

85. The original version of the 1973 measure had a much more generous eligibility criterion than "serious financial hardship." Under it, the Board was to determine whether "the victim incurred an injury which resulted in a pecuniary loss which the victim is unable to recoup without substantially reducing the victim's standard of living." S.B. 149, § 13964, Jan. 31, 1973. The change to the more demanding standard was made by Senator Behr when he decided that without such amendment the measure had "very little chance" of passage. Telephone interview with Behr, Feb. 14, 1974.

86. See, e.g., N.Y. CRIME VICTIMS COMPENSATION BOARD, 1ST ANNUAL REPORT 5 (1967); 2d ANNUAL REPORT 6 (1968); 3d ANNUAL REPORT 11-12 (1969); 4th ANNUAL REPORT 11 (1970). It is noteworthy that in the most recent draft of the federal victim compensation statute, Senator Mansfield dropped the "need" requirement because of the New York experience, sup-

New York Board members indicate their despair over having to reject applications of persons with cases that appear especially worthwhile, while at the same time making awards to others whose cases are less meritorious, but who demonstrate serious financial hardship. Particularly galling is the fact that members of the New York Board feel obligated to deny claims of thrifty persons who have saved moderate sums of money, while they feel it must by law give awards to persons who may have earned a good deal more but have "squandered" their income as they went along.⁸⁷

It must be stressed, however, that in California the members of the State Board of Control, in large measure through their generous interpretation of the "need" requirement, extended the victim compensation program to the scope that it now enjoys. An examination of the figures in Appendix I shows the striking growth of the compensation program. Some of that growth undoubtedly was a function of increased public awareness of the existence of the program, but even more probably was related to the opening up of the barriers previously imposed by the welfare department's tight construction of the "need" requirement. In its early years of administration, the State Board of Control had turned to the Attorney General for guidelines which would satisfy the mandate that money be provided for "indemnification of California residents who are victims of crime" and "who are needy."⁸⁸ But that office chose to let the Board members steer their own course, in the hope that administrative flexibility might emerge, particularly as the Board members were personally confronted with the tragedies and deprivations suffered by applicants seeking their assistance.⁸⁹

The Board, at first, chose to apply "almost the same social welfare standards" as its predecessors had used.⁹⁰ "If someone is

porting the change on the ground that ". . . all citizens of this Nation are equal before the bar of justice," and he expressed "hope that the same concept of equality might exist for victims of crime. . . ." *Hearing on H.R. 8777 and S. 300 Before the Subcomm. on Immigration, Citizenship and International Law on the House Comm. on the Judiciary* 59, 93d Cong., 1st Sess. (1973).

87. Edelhertz, et al., *supra* note 22, at 110-113.

88. Cal. Stats. 1967, ch. 1546, p. 3707, § 1 (repealed 1973).

89. Shank, in 1 *PROCEEDINGS*, *supra* note 19, at 184-185. That the strategy had a certain success can be noted from a report on the reactions of members of the Board to their work in this early period:

. . . it's making the program exceedingly unpopular because the people come in again and again and say because I was frugal, because I saved a dollar, I'm being deprived of my compensation, whereas the man who threw the money away, or the woman who threw it away, is going to get money from you. This story you hear over and over again, and the Board is getting sick of it. *Id.* at 197.

90. *Id.* at 165.

going to be forced . . . onto the welfare lists, we will give him some money to keep him off" it was observed late in 1968.⁹¹ But by 1970 the Board had adopted a definition of "need" that was more liberal, and one which will probably serve as well for its understanding of "serious financial hardship." It read:

"Need" shall mean that the victim suffered pecuniary loss to an extent that he can no longer meet essential obligations or expenses from income or assets available for such purpose, or from indemnification or financial assistance that may reasonably be expected to be available from any other source, without serious financial hardship. In determining need, the Board of Control shall also consider the victim's financial condition prior to commission of the crime, and shall not grant indemnification to an eligible victim in an amount that would place him in a better financial condition than existed prior to the crime. The determination of need and the amount of indemnification are factual matters within the sole discretion of the Board.⁹²

Other administrative interpretations made in regard to the need requirement provided the Board with about as much leeway as it could manage in favor of claimants under the terms of statutory requirements. Thus, for instance, it was decided that the maximum award of \$5,000 applied to each person affected by a criminal incident, and not to families as a unit. Under this interpretation, the death of a father, for instance, might bring his wife and two surviving children a grant of \$15,000.⁹³ The Board also adopted an interpretation which allowed prospective need to figure into its calculations. Under this approach, an applicant who seemingly would exhaust his resources, even if they were relatively ample

91. *Id.* The new law, reflecting a different spirit, notes that "[a]ssistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program." CAL. GOV'T CODE § 13965 (West 1973). This stricture notwithstanding, it seems likely that the categoric exclusions of the welfare program will prevail, particularly in instances where federal subventions are involved.

92. 2 CAL. ADM. CODE § 648.5 (1970). Despite the discouragement of the final sentence, a number of writs of mandamus have been brought against Board actions. In one such instance, a claimant received a total award of \$1,149. His attorney, insisting that the result was "such a serious abuse of discretion that it defies credulity," and that he had been "astounded and shocked by the pettiness of the award," Letter from Daniel J. Sullivan to Vern Cartwright, Mar. 15, 1973, succeeded in having the amount raised to the \$5,000 maximum in a court action. *Bruner v. Board of Control*, Case No. 233218, Super. Ct., Sacramento County, July 19, 1973.

93. For a case history of this type of award see L.A. Times, Aug. 20, 1972, at § 2, p. 1, col. 1-8 (Orange Cty. ed.).

at the time, because of victimization expenses, might qualify for assistance.

It is interesting to note, in connection with the failure of the California legislature to eliminate the financial hardship requirement from the new victim compensation law, that the chief investigator for the New York program has estimated that in his state excision of the "serious financial hardship" rule would add only about \$150,000 to the cost of the program.⁹⁴ This estimate is based in part on the expectation that richer persons would either have adequate insurance coverage in many instances or, if their losses were small, would not bother to apply for compensation aid. In addition, of course, crimes of violence tend to be class-related, and much more frequently involve low-income persons than those without "serious financial hardship."

All told, tests of financial need seem difficult to justify either in philosophical or practical terms. If persons are to be aided because they bear the burden of criminal victimization, it makes little sense to compel them to deplete their resources in order to qualify for benefits. In addition, the financial costs of administering a hardship test must be balanced against any savings from the requirement. Verification of most elements of claims, such as the nature of the criminal incident and pecuniary losses, are easier to investigate than financial need. A search for undisclosed assets is difficult and time-consuming, as well as demeaning to a claimant who must bear the injury of surrendering privacy in addition to the criminal hurt already suffered. Certainly, the loss in goodwill from probes of private matters would often seem to offset gains that the victim compensation program might realize in convincing citizens that the aim of the state government is to render them help at a time of tragedy and during a period of social alienation and distress.⁹⁵

CONCLUSION

In revising its statute during the 1973 legislative session, California moved nearer to the standards realized in the most comprehensive of the state programs of crime victim compensation. The new law demonstrates a willingness on the part of the legislature to reexamine its earlier efforts in the light of continuing experience, changing ideological convictions, and information from

94. Edelhertz, et al., *supra* note 22, at 112.

95. For an excellent study of the responses of persons victimized by crime see Lejeune & Alex, *On Being Mugged: The Event and Its Aftermath*, 2 URBAN LIFE & CULTURE 259 (1973).

elsewhere. Unfortunately, it also represents an example of a failure to do something as well as possible when it was being done.

APPENDIX I

VICTIM COMPENSATION BUSINESS BY STATE BOARD OF CONTROL
1967 THROUGH JANUARY 1974

Fiscal Year	New Claims	Number		Amount	Budgeted (1)
		Denied	Allowed		
1967-68	169	39	21	\$ 16,513.65	\$ 67,500
1968-69	401	180	63	78,688.57	25,000 (2)
1969-70	369	285	130	171,644.26	100,000 (3) (5)
1970-71	471	254	173	383,779.49	100,000 (4) (5)
1971-72	698	266	267	523,359.13	275,000 (6) (7)
1972-73	1,081	323	401	717,709.40	850,000 (6) (8)
1973-thru Jan. 1974	705(10)	279	430	841,895.25	1,102,000 (9)
Totals	3,894	1,626	1,485	\$2,733,589.75	

Source: State Board of Control.

- (1) Plus fines deposited in Indemnity Fund.
- (2) Plus emergency fund augmentations of \$59,000.
- (3) Plus emergency fund augmentations of \$77,500.
- (4) Plus deficiency bill augmentation of \$284,400.
- (5) Plus \$25,000 to Attorney General for investigation.
- (6) Plus \$50,000 to Attorney General for investigation.
- (7) Plus emergency fund augmentation of \$250,000.
- (8) Plus \$25,000 transferred to Attorney General for investigation charges.
- (9) Plus \$150,000 to Attorney General for investigation.
- (10) The backlog is 795 cases.