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Compensation for Victims of Crime—Some Practical Considerations

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COMMENTS

States.¹⁶¹ States have always maintained the right to grant asylum to foreign fugitives unless such action conflicted with treaty obligations.¹⁶² The treaty provisions for extradition between the United States and Canada are limited to defined offenses; and it appears that there is no traffic offense, indictable or otherwise, which is covered by treaty.¹⁶³ Hence the fugitive American motorist is secure from Canadian criminal prosecution so long as he remains in the United States.

IN CONCLUSION

It appears that the American motorist meets a strikingly similar legal analysis by the courts of both Ontario and New York. The law applied is also similar; however, as has been shown, there are differences. Perhaps one reason for this similarity is the mutual foundation of the New York and Ontario legal systems in the English Common Law. However, the differences in the civil and criminal law of the two jurisdictions may result in different consequences to the American motorist, regardless of whether he is a plaintiff or a defendant.

This Comment has pointed out some of these major differences which are found in common motor vehicle situations. The footnotes have collected many sources and hopefully may serve as a spring-board into the particular factual situation confronting the practitioner. It is only by an awareness of these differences that the case of the American motorist in Canada can be handled to the American motorist's best advantage.

ARTHUR A. RUSS, JR.

COMPENSATION FOR VICTIMS OF CRIME—SOME PRACTICAL CONSIDERATIONS

The compensation of the victims of crime embodies a concept new to American law. However, changes in our attitudes toward the criminal and law enforcement . . . make it necessary to revise our attitude toward the victim of crime. We have taught our people to leave law enforcement to our police and our courts. We are now seeking to insure fully that all those arrested on criminal charges are given every right guaranteed to them under our constitution. However, so far we have given no consideration to the law-abiding citizen, who despite the best efforts of our over-worked police, incurs personal injuries in a criminal attack.

—Senator Ralph W. Yarborough¹

161. See Castel 269; Harper, *Tort Cases in the Conflict of Laws*, 33 Can. B. Rev. 1155, 1158-59 (1955).

162. LaForest, *op. cit. supra* note 160, at 16.

163. See *id.* at 172-82.

1. Letter by Senator Yarborough to the Buffalo Law Review, July 27, 1965.

INTRODUCTION

The criminal law, until recently, had been concerned almost exclusively with the apprehension, punishment and rehabilitation of the criminal offender. Relatively little attention had been given to the victim of crime. However, in 1963 New Zealand adopted a plan to provide limited state compensation for victims of criminal violence.² In 1964, Great Britain adopted a similar plan,³ and in 1965 the state of California passed legislation,⁴ implementing its compensation scheme through its Department of Welfare. A plan similar in many respects to those of Great Britain and New Zealand has been introduced into the United States Senate by Senator Ralph Yarborough.⁵ In the House of Representatives, on January 10, 1966, Congressman Horton introduced a bill entitled Criminal Injuries Compensation Act.⁶ The states of Michigan and Illinois are presently engaged in investigating the possibility of implementing a state compensation scheme.⁷ In New York and New Jersey, the Attorneys General are presently preparing legislation.⁸

The views of the proponents and critics of the presently existing legislation are adequately expressed in many current legal publications.⁹ Since it appears inevitable that some type of legislation will soon be enacted on the federal as well as the state level, the author intends to examine some of the more practical problems involved in implementing a compensation scheme, rather than questioning the advisability of such legislation as a whole.

THE CONSIDERATIONS WHICH HAVE LED TO RECENT LEGISLATION

Although concern for the injured victim of crime has only recently led to legislation, the plight of the innocent victim has long been recognized. In 1895, a summary report of the Paris Prison Congress stated:

. . . The guilty man, lodged, fed, clothed, warmed, lighted and entertained at the expense of the state in a model cell . . . has paid his debt to society; he can set his victim at defiance; but his victim has his consolation; he can think that by [the] taxes he pays to the treasury, he has contributed toward the paternal care which has guarded the criminal during his stay in prison.¹⁰

2. 1 New Zealand Stat. No. 134 (1963) [effective Jan. 1, 1964].
 3. See Home Office, *Compensation For Victims of Crimes of Violence*, Cmnd. No. 2323 (1964) [hereinafter Home Office].
 4. Cal. Stat. (1965) ch. 1549 [now Cal. Welfare & Inst'n's Code § 11211].
 5. S. 2155, 89th Cong., 1st Sess. (1965) [hereinafter S. 2155].
 6. H.R. 11894, 89th Cong., 1st Sess. (1966).
 7. Hearings of Governor Rockefeller's Committee on Compensation For Victims of Violent Crimes, New York City, Jan. 3, 1966, p. 25 [hereinafter *Hearings*].
 8. *Ibid.*
 9. Symposium, *Compensation to Victims of Crimes of Personal Violence: An Examination of the Scope of the Problem*, 50 Minn. L. Rev. 211 (1965); Symposium, *Compensation for Victims of Criminal Violence*, 8 J. Pub. L. 191 (1959); Cameron, *Compensation for Victims of Crime: The New Zealand Experiment*, 12 J. Pub. L. 367 (1963); Griew, *Compensation for Victims of Crimes of Violence*, Crim. L. Rev. (Eng.) 801 (1962); Mueller, *Criminal Law and Administration*, 34 N.Y.U.L. Rev. 83 (1959).
 10. The Paris Prison Congress, 1895, Summary Report (London).

This, however, was not the first voice to bemoan the plight of the victim. There are sporadic references to this problem in very early sources. It is told that Ajax, in reproaching Achilles for not accepting a reparation offer made by Agamemnon, reminds him that even a brother's death may be appeased by a pecuniary fine, and that the murderer having paid the fine, may remain among his own people.¹¹ Restitution or reparation in some form was the chief and often the only element of punishment among the Semitic nations. The code of Hammurabi, approximately 2200 B.C., in some cases demanded thirty times the value of the damages caused.¹² It should be noted here that the severe penalties were probably not enforced in the interest of the victim, but rather to increase the offender's punishment.

In New Zealand, prior to the enactment to their Criminal Injuries Compensation Act,¹³ the same state of affairs existed as is presently found in the United States. The victim of a crime was left entirely to his own resources to pursue his civil remedies against the offender. In most cases the offender, assuming he has been apprehended, is simply not worth suing since he usually has few assets and little prospect of acquiring any. Furthermore, "the more serious the injury, the more likely it is that the offender will go to prison and the longer his sentence will be. Since in New Zealand, prison earnings are trivial [also true of New York State¹⁴], this effectively prevents an offender from acquiring means to satisfy a judgement against him."¹⁵ Moreover, it is likely that "the current aims of penal policy, to prevent further offending and to rehabilitate the offender, [will be] frustrated if an obligation to pay large amounts by way of compensation is hanging over his [offender's] head for many years."¹⁶ The above considerations are primarily responsible for the recent legislation.

THE BRITISH AND NEW ZEALAND STATUTES, AND THE YARBOROUGH PROPOSAL

The New Zealand Criminal Injuries Compensation Act has the broad purpose of providing limited compensation to victims of criminal violence, defined in the statute as murder, woundings, assaults and violent sexual offenses. No appeal is provided from the decision of the tribunal, consisting of three members. The right to compensation exists independent of the offender's apprehension or conviction, and the standard of proof required in the proceedings is civil rather than criminal. Crimes against property are non-compensable and there is a statute of limitations provision of one year.

In its discretion, the board may award compensation to the injured person or any person responsible for his maintenance.¹⁷ The board is directed to con-

11. Schafer, *Restitution to Victims of Crime* 3 (1960).

12. *Id.* at 4.

13. *Supra* note 2.

14. New York Correc. Law §§ 481, 170-96.

15. Cameron, *supra* note 9, at 368.

16. *Ibid.*

17. *Id.* at 372. This provision also allows the board to award compensation to the dependents of the victim, if the victim has died.

sider the behavior of the victim as contributing to his own injury, in determining the amount of the award. The act provides that compensation may be awarded for reasonable expenses actually incurred as a result of injury or death, loss resulting from partial or total incapacity to work and pain and suffering. Recovery is limited to approximately 2,800 dollars for pecuniary loss other than loss due to incapacity to work, and to approximately 1,400 dollars for pain and suffering.¹⁸ Any benefits received by the victim from other official sources or from the offender must be deducted from the award, and the board is vested with the power to recover all or part of the state award upon the application of the Secretary of Justice.

The British Act also vests in the board the discretionary power to award compensation for personal injuries caused by violent crimes. The administrative procedure under the British plan is substantially similar to that of the New Zealand plan. The British plan, however, requires that losses must amount to at least three weeks earnings or approximately 137 dollars, whichever is the lesser.¹⁹ This requirement is designed to limit recovery to only those cases which involve substantial injury.

The Yarrowborough proposal is applicable to the District of Columbia and to the maritime and territorial jurisdictions over which the federal government exercises its general police powers. This proposed scheme, which was intended to serve as a model for future state legislation, is substantially similar to the existing legislation in Britain and New Zealand. The proposal sets forth specific offenses for which compensation shall be awarded.²⁰ Compensation may be made in any manner and "on such terms as the commission deems appropriate,"²¹ but shall not exceed 2,500 dollars.

PROBLEMS OF IMPLEMENTATION

Should There Be Any Limit on the Type of Offenses for Which Compensation Will Be Allowed?

To find a formula which would include those cases for which compensation would be appropriate and, at the same time, reduce the inevitable element of uncertainty inherent in any general definition, a balance must be sought between listing specific offenses to which the act will apply and utilizing a general definition. Dishonest claimants would have greater freedom from detection if they could employ the shelter provided by the vague words of a general definition. On the other hand, a schedule of offenses would lack the flexibility necessary to adequately implement any experimental scheme. The apparent advantages of using a schedule to delineate the scope of the scheme are that

18. Most likely, the inclusion of pain and suffering as an element of compensation was mainly for the benefit of victims of sexual offenses who rarely incur pecuniary loss. See Cameron, *supra* note 9, at 373.

19. Home Office § 22(a).

20. S. 2155 § 302.

21. S. 2155 § 305(a).

the time expended in arguing legislative purpose and points of law would be reduced substantially, and the plan would be more intelligible to those who might not be familiar with the more complex principles of statutory interpretation. However, a deserving claimant might have difficulty in establishing his eligibility if his assailant were convicted of an offense which was not specifically included in the schedule. On the other hand, it is argued²² that since recovery should not depend upon the conviction of the offender,²³ this problem of establishing one's eligibility is somewhat alleviated.²⁴

Several approaches to this problem have been advanced. The Yarborough proposal lists a schedule of offenses derived from the District of Columbia Code and the United States Code and attempts to include every type of violent crime that might result in compensable injury. The Senator recognizes the "obvious danger in such lists,"²⁵ but he feels that any type of crime producing a personal injury would be included within the scope of the act as an assault. Whether this is an adequate solution to the problem is doubtful. If it is expected that the commission will exercise a certain degree of discretion out of necessity or for purposes of equity, why further complicate matters by forcing the commission to allude to the "pigeon-hole" technique. At the other extreme, the California statute has been criticized²⁶ on the ground that no adequate definition of coverage is supplied by the act. The statute provides simply that "upon conviction of a person of a crime of violence . . . the court shall . . . order the defendant to pay. . . ."²⁷ A proposal incorporating both a schedule of offenses and words allowing the commission to exercise some discretion would be most functional.

A provision excluding compensation for injuries caused by motor vehicles seems entirely equitable in jurisdictions having compulsory liability insurance, supplemented by uninsured motorist coverage.²⁸ The British statute makes it explicit that injuries caused by motor vehicles are not within the scope of coverage, except when the vehicle was used as a weapon. Although the Yarborough proposal does not expressly exclude awards to victims of motor vehicle accidents, the Senator intended this limitation to be implicit.²⁹ The victim of an automobile accident might argue that the schedule of offenses listed in the act was not intended to be all inclusive, but rather to enumerate some of the more common offenses to which the act shall apply. This interpretation would

22. See Yarborough, *S. 2155 of the Eighty-ninth Congress—The Criminal Injuries Act*, 50 Minn. L. Rev. 255, 257 (1965).

23. The California statute, unlike the Yarborough proposal, requires conviction of the offender as a condition of eligibility under the Act. Cal. Welfare & Inst'ns Code § 11211. See S. 2155 § 205(1).

24. See *Hearings* p. 78.

25. Yarborough, *supra* note 22, at 263.

26. Childres, *Compensation for Criminally Inflicted Personal Injury*, 50 Minn. L. Rev. 271, 280 (1965).

27. Cal. Welfare & Inst'ns Code § 11211.

28. See, e.g., N.Y. Ins. Law § 330(2).

29. Yarborough, *supra* note 22, at 263.

be buttressed by referring to the words in section 302 of the act which state that "the commission *may* order the payment of compensation . . . for personal injury or death which resulted from offenses in the following categories. . . ." ³⁰ It may also be argued by the spouse of a victim of a fatal automobile accident that his spouse's injuries and death are compensable under the act and fall within the schedule of offenses under the category of "manslaughter."³¹ In order to avoid these possible extensions of the intended scope of the act, it may be advisable to incorporate an explicit provision excluding such coverage.

Should the Act Provide a Specific Period Within Which a Claim Must Be Filed?

The New Zealand plan requires an application to be filed with the commission within one year, except upon showing of cause.³² The British act is less specific in requiring an application to be filed as soon as possible, but it provides that the board will entertain applications only where the circumstances were reported to the police without delay.³³ The Yarborough proposal provides for a two year statute of limitations.³⁴ In commenting on this provision, Senator Yarborough stated that "it is preferable to rely on the prudence of the commission to assess the meaning of delay, rather than to fix a rigid statute of limitations."³⁵ It undoubtedly seems reasonable to allow the commission some discretion in this area; however, no words allowing the exercise of this discretion are to be found in the Yarborough proposal other than the provision allowing the commission to promulgate such rules and regulations as it deems appropriate.³⁶ This provision, however, does not allow the commission to waive the statute of limitations. Furthermore, it seems apparent that such an extensive period may increase the possibilities of fraudulent claims. By providing for a shorter statute of limitations, it would become necessary to vest the commission with discretion to waive the limitation in cases where the victim has been incapacitated for an extended period. The provision in the British act requiring the victim to report the incident to the police without delay has been omitted from the Yarborough proposal. The inclusion of such a provision might facilitate crime detection and prevention, and would limit somewhat the possibility of fraudulent claims.

Should the Victim Be Barred from Recovery if He Is a Relative of the Offender or a Member of His Household?

The two reasons offered for disallowing recovery in cases of intrafamily claims are collusion, and the possibility of indirectly benefiting the offender

30. See S. 2155 § 302 [emphasis added].
 31. S. 2155 § 302(11).
 32. 1 New Zealand Stat. No. 134 § 17(4) (1963).
 33. Home Office § 23.
 34. S. 2155 § 304(a).
 35. Yarborough, *supra* note 22, at 262.
 36. See S. 2155 § 208.

through compensation to his family. Although the possibility of collusive claims may be thought to be high, there seems to be no reason to believe that this type of case presents any greater difficulty in establishing the evidential circumstances of the offense than would exist in the case of an attack by a stranger in an isolated place. Furthermore in the case where the offender is a relative or member of the victim's household, it is more likely that his testimony will also be available to the commission, as opposed to the case where the assailant is a stranger. In practice, complaints by members of the offenders' households are made only in serious cases of unprovoked assaults.³⁷ Furthermore, the fear of prosecution would, in most cases, deter people from making collusive claims.³⁸ The claims of innocent children should not be barred because their mother was killed by their father, rather than by a stranger. In many cases where an individual is awarded compensation for injuries inflicted by his or her spouse, the offender will be convicted in the criminal courts. It can hardly be said that the offender in this case will benefit or profit from the award when he faces a prison term. In order to increase the possibility of convicting such an offender, a provision requiring the claimant to testify in criminal proceedings could be made a condition to eligibility under the compensation act.³⁹ Moreover, the possibility of the offender benefiting by the award would become less significant if the award included no more than medical expenses, loss of earning or other pecuniary losses. As such, the offender could only benefit from the award if he received state compensation but refused to pay hospital and medical expenses. This "double recovery" might be avoided by providing that hospitals be given statutory liens under the act.

Senator Yarborough's proposal excludes compensation for criminally inflicted personal injury within the family.⁴⁰ The language he uses is basically that of the New Zealand statute,⁴¹ except that New Zealand allows compensation for expenses and loss of income, excluding only payment for pain and suffering.

Should There Be a Minimum Monetary Standard for Claims?

To avoid the expensive administrative costs of processing relatively small claims, it has been argued that claims amounting to less than 250 or 300 dollars should not be entertained by the commission.⁴² This suggestion may not be desirable, for it may operate to encourage claimants to file inflated claims. Crime statistics indicate that the majority of violent crimes occur

37. Justice, Compensation for Victims of Crimes of Violence, A Report, § 20, pp. 9-10 (1962).

38. *Ibid.*

39. One objection to this type of provision is that the witness's testimony might be influenced by the financial interest he has in the outcome of the trial.

40. S. 2155 § 304(c).

41. 1 New Zealand Stat. No. 134 § 18 (2) (1963).

42. See *Hearings* pp. 11, 74.

in the more impoverished urban areas.⁴³ Assuming this to be true, the majority of claims filed with the commission will be made by persons in the lower income brackets. It is apparent that the loss of 200 dollars to an individual with a low income has a far more serious impact on that individual and his family than it would have on an individual of more substantial means. The Yarborough proposal, like the New Zealand plan, requires no minimum claim. Great Britain's scheme compensates only those suffering an appreciable degree of injury, considered to be three weeks loss of earnings or approximately 137 dollars, whichever is the lesser.⁴⁴

What Ceiling Should Be Placed on the Amount of the Award?

Great Britain imposes no overall limit on claims, but restricts the maximum awarded for loss of past and future earnings to twice the average industrial wage.⁴⁵ New Zealand places limits on the various categories of compensation and imposes an overall maximum of approximately 10,080 dollars.⁴⁶ The Yarborough proposal sets the maximum award at 25,000 dollars.⁴⁷

New Zealand funded its program in the first year with a budget of 84,000 dollars,⁴⁸ and the cost of the British program during its first eleven months amounted to approximately 280,000 dollars.⁴⁹ Because of the small amount allocated by the state of California (100,000 dollars), the Department of Social Welfare found it necessary to allow relief to those with less than 15,000 dollars worth of property.⁵⁰ In attempting to estimate the costs of a nationwide scheme, a federal jurisdiction scheme (Yarborough proposal) or a statewide scheme, one might begin by examining the respective F.B.I. reports. For instance, in the state of New York for 1964, 833 homicides, 1507 forcible rapes and 18,508 aggravated assaults were reported.⁵¹ Multiplying the total offenses committed by a minimum claim of 300 dollars gives a projected cost of 6,254,400 dollars. This is an extremely modest cost projection of such a program considering that many more crimes are committed than these figures indicate (*i.e.*, unreported forcible rapes). Furthermore, 300 dollars may be an underestimation of the average award. Because of the many variables and unknowns involved, there is virtually no way of predicting with any degree of accuracy the cost of a compensation scheme. It is obvious, however, that any such plan will be expensive and for this reason an overall maximum

43. See The World Almanac and Book of Facts 343 (New York World Telegram and Sun 1965).

44. Home Office § 22(a).

45. *Ibid.*

46. 1 New Zealand Stat. No. 134 § 19(3) (1963).

47. See S. 2155 § 304(b) which reads, "No compensation shall be awarded under this Act in an amount in excess of \$25,000." Under this wording, a victim and his dependents might argue that each is entitled to recover the maximum award. Perhaps more precise language should be used to obviate this ambiguity.

48. *Hearings* p. 28.

49. *Id.* at 14.

50. *Id.* at 26.

51. Department of Justice, Uniform Crime Reports for the United States 450 (1964).

award should be prescribed and a limited fund appropriated to implement the program. The amount of the maximum award will depend in part upon the type of damages for which compensation will be allowed.

Should the Scheme Compensate Victims for Pain and Suffering?

Senator Yarborough would allow compensation for pain and suffering⁵² as does the New Zealand statute.⁵³ In commenting on the Yarborough proposal, Professor Childres⁵⁴ stated, "Pain and suffering makes little enough sense in the common law; it makes none at all in state compensation to victims of criminally inflicted personal injury."⁵⁵ A contrary view has been expressed Miss Margery Fry,⁵⁶ an early proponent of state compensation. Estimating the value of this subjective loss, however, is virtually an impossible task for a jury; moreover, in a civil suit it is a job that is undertaken as much to punish the wrongdoer as it is to compensate the victim.⁵⁷ Within the context of a state compensation scheme the element of punishment essentially vanishes, except for the residuum of subrogation rights.⁵⁸ This subrogation right, in practice, will have very little punitive value since the basic assumption of the scheme is a judgment proof or unavailable defendant. Of course, to allow pain and suffering as an element of compensation would greatly increase the cost of any state compensation program. However, in order to adequately compensate the victim of a rape,⁵⁹ it might be argued that "mental anguish" accompanied by medical expenses should be allowed as an element of state compensation. Another possible solution to the problem of compensating the victim of rape is to allow such a victim to legally abort her child and to award compensation for the medical expenses incurred.

Should the Award Be in the Form of a Lump Sum or Periodic Payments?

In the words of Senator Yarborough, "Authority is given under S. 2155 for the commission to make the payment on such terms as it deems appropriate."⁶⁰ With regard to pain and suffering, a lump sum award is justified simply because it is accepted practice in civil suits. However, with regard to disability or death, a projection of lost income can be made on a reasonable basis, although the extent and duration of the loss are highly uncertain questions. A wife who remarries one month after receiving an award for the death of her former husband should not stand on the same footing because the award

52. S. 2155 § 303(d).

53. 1 New Zealand Stat. No. 134 § 19 (1963).

54. Associate Professor of Law, New York University, School of Law.

55. Childres, *supra* note 26, at 278.

56. Miss Fry devoted a great deal of her life to attempting to reform the criminal law of Great Britain. In 1957, the year in which she died, Miss Fry proposed the establishment of a limited system of governmental compensation for victims of criminal violence.

57. See McCormick, *Damages* § 88 (1935).

58. S. 2155 § 401(a).

59. See Cameron, *supra* note 9, at 373.

60. Yarborough, *supra* note 22, at 264. See S. 2155 § 305(a). Home Office § 22.

was made in a lump sum as the wife who never remarries.⁶¹ In such cases awards may be made in the form of periodic payments under constant review, if the reward is to bear any close relation to the damage suffered.

Should a Compensation Plan Provide for Judicial Review?

The New Zealand statute restricts the right to appeal to questions of jurisdiction.⁶² The British statute entirely eliminates the right of appeal.⁶³ In a speech introducing his bill, Senator Yarborough stated that ". . . there will be no right of appeal."⁶⁴ However, upon a more careful examination of his bill, one finds that section 205(j) provides that "except as otherwise provided in this Act, the Administrative Procedure Act shall apply to the proceedings of the commission." Furthermore, section 301(e) provides that "no order may be made under this section unless the commission, *supported by substantial evidence* finds that . . ."⁶⁵ Although Senator Yarborough intended to eliminate the right of appeal, the face of the bill seems to indicate that this right is preserved. It is apparent that the state legislatures may encounter greater difficulty in attempting to effectively eliminate the right of appeal than would the federal legislature, since the states must contend with their own constitutions as well as the federal Constitution.⁶⁶ Because the area of judicial review is presently in a state of flux and moderate confusion, it would be virtually impossible to predict the results of such an attempt by a state legislature. There is, however, an approach that state legislation might take, if it finds it desirable to eliminate judicial review.⁶⁷ A state act could make it explicit that compensation awards are intended to be a matter of "grace," not of "right." Appeal should be provided to a commission review board within the administrative structure on questions of eligibility and amount of award. The act should explicitly state that decisions and orders of the commission review board are to be final, and no reference should be made to the substantial evidence rule. Even with this approach, there is no way to be certain that judicial review would be precluded. The expertise, expense and delay arguments propounded by those who would eliminate judicial review are met by the counter argument that final determinations on questions of arbitrariness should be made by a court of law, not an administrative body.

CONCLUSION

Several approaches have been taken in response to the question of whether the state should assume the obligation of compensating victims of criminal

61. See Childres, *Compensation for Criminally Inflicted Personal Injury*, 39 N.Y.U.L Rev. 444, 462-70 (1964).

62. See 1 New Zealand Stat. No. 134 § 16 (1963).

63. Home Office § 12.

64. 111 Cong. Rec. 13534 (daily ed. June 17, 1965). See S. 2155 § 207 which reads, "Except as otherwise provided in this Act, orders and decisions of the commission shall be final."

65. S. 2155 § 301(a) [emphasis added].

66. See generally Jaffe, *The Right to Judicial Review*, 71 Harv. L. Rev. 401 (1958).

67. See Davis, *Administrative Law*, §§ 28.09-.15 (1959).

violence. Those who oppose the adoption of such a plan argue that the ultimate solution to the crime problem is to attempt to reduce the number of victims⁶⁸ by allocating to crime prevention the vast sums which would be expended annually on compensation. The proponents of compensation plans, however, argue that such plans are merely logical extensions of present government policy.⁶⁹ Compensation is not an acceptance of the present crime rates, nor does it preclude a vigorous program of crime prevention.

Critics of the existing and proposed legislation have relied heavily upon the argument that too many mechanical problems remain unsolved.⁷⁰ After examining some possible solutions to these problems, it is clear that the obstacles to a workable plan are not insurmountable and hopefully those legislative bodies currently drafting legislation in this area will find practical solutions to them.

ROBERT A. SANDLER

THE POLYGRAPH IN PRIVATE INDUSTRY: REGULATION OR ELIMINATION?

Throughout history man has attempted to find methods for determining the truth. Some of the earliest efforts aimed at distinguishing fact from fantasy were predicated on the physical reactions of the subject and included such practices as the primitive trial by ordeal (where the removal of an unharmed hand from a fire was determined by *judicium Dei*) and the Chinese method of chewing dry rice powder while being questioned.

Today, modern polygraphy ("lie detection") is more sophisticated than the ancient rice chewing of the Chinese yet the theory underlying both practices is essentially the same. The hypothesis of both methods is that emotional states of human beings are accompanied by observable physiological responses, such as changes in heart rate, breathing and skin temperature and that the psychological stress which results from telling a lie produces distinguishable physiological responses.

EXTENT OF THE POLYGRAPH'S USE IN INDUSTRY

The use of the lie detector by private industry and the government has greatly increased in recent years. The sharply multiplying number of polygraph examinations given by business firms and government agencies to present and prospective employees has become a matter of increasing national concern. One author has commented that "probably no other technique of intrusion will ultimately bring on more of a battle royal between the forces promoting its general

68. See *Compensation for Victims of Criminal Violence, A Round Table*, 8 J. Pub. L. 191, 218 (1959).

69. Note, *Compensation for the Victims of Criminal Violence*, 40 St. John's L. Rev. 67, 73 (1965).

70. See, e.g., Childres, *supra* note 26, at 283.