MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

Held in Room 519, at the Statehouse at 2:45 ~~a.m.~~/p. m., on February 5, 19 75.

All members were present except: Mr. Sellers and Mr. Ward, who were excused.

The next meeting of the Committee will be held at 2:45 ~~a.m.~~/p. m., on February 6, 19 75.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.

H. J. VanBebber

Chairman

The conferees appearing before the Committee were:

Representative Arden Dierdorff
Debra Barnes Miles, Eudora
Mrs. Lemuel Phillips, Ulysses
Mrs. Cap Streit, Downs
Mrs. Anne Daniel, Tennessee
Clyde Schinnerer, Scott City
Rep. Glee Jones
Mrs. Leroy Forsman, Kansas City
Mrs. Sarah Schnell, Topeka
Mrs. V. A. Carlson, Topeka
Rep. David Heinemann
Deanell Tacha, Professor, KU
Carol McDowell, Women's Political Caucus
Rep. John Bower
Senator Jan Meyers
Cora Hobbel,
Theresa Counts
Ruth Stout Wright, University Women
Kala Stroup, KU Dean of Women
Che Mortimer
Marian Warriner, League of Women Voter
Irene French
Lou Graumann
Judy Runnels
Ruth Wright
Mrs. Wilbur Leonard, YWCA
Jane Mortimer

The meeting was called to order by the Chairman who explained that the proponents would be heard first, with Mr. Dierdorff serving as coordinator, and the opponents would be heard with Mr. Heinemann as coordinator. He stated that each side would be allowed 30 minutes for their presentation.

Rep. Dierdorff stated that when the Equal Rights Amendment was ratified, it occurred in just a few minutes time without any hearings or notice to individuals and that there had been no opportunity to consider or study the ramifications; that he felt in view of this that the legislature should reconsider. He then introduced Mrs. Debra Miles who testified that she sees ERA like a drug which attacks an illness in the body but the side effects kill you. She stated that ERA would do some good things but the side effects would be deadly. In particular, she expressed concern about the Social Security benefits, and stated she believed it would create more problems than answers.

Mrs. Lemuel Phillips testified that she and most of the other female residents in Mr. Dierdorff's district, support HCR 2009; that she believes ERA will take away many of the privileges women presently enjoy. She mentioned specifically protective laws and Social Security benefits.

Mrs. Cap. Streit stated that she represents the feelings of a majority of the women in the Downs area; that they had specifically requested Mr. Dierdorff to introduce this Resolution because of their concern about the benefits individuals will lost. She stated that the Equal Employment Opportunity Act and the Act against discrimination give ample protection against some of the things the ERA promoters are talking about. (See printed statement.)

Mrs. Ann Daniels of the State of Tennessee appeared before the Committee and explained that Tennessee and Nebraska had each rescinded their previous action; that this was strictly on a non-partisan basis in each case and the legislature had been made aware that people didn't really want it and responded accordingly. She stated that the individual who sponsored this bill in Tennessee had no election opposition and that it was not an election issue. Mrs. Daniels stated that although the Tennessee Attorney General ruled it was not possible to rescind, the U.S. Supreme Court has not made a ruling; that there are many authorities who believe it is legal to rescind.

Mr. Clyde Schinnerer of Scott City appeared in support of the proposed Resolution. (See printed statement)

Mrs. Sarah Schnell testified that she believes although the ERA sounds good, it will take away more rights than it will give; that Margaret Meade, a noted expert on individual rights, feels that ERA is not appropriate and will not be beneficial in the long run.

Rep. Glee Jones appeared in favor of HCR 2009. She stated that the public has often accused the Kansas Legislature of passing laws without sufficient thought and study, and that this was true in this case; that there were no committee hearings, no discussion, no notification, no public input when this was introduced. She stated that she believes the Civil Rights Act and the Equal Opportunity Act gives sufficient protection.

Rep. David Heinemann, quoted from an Attorney General's opinion of 1973, in which he ruled that when once ratified, the power to act on that ratification ceases to exist. He introduced Prof. Deanell Tacha from the University of Kansas, who spoke in opposition to the Resolution. (See printed statement)

Carol McDowell testified that the Women's Political Caucus supports the ERA, and stated that a Harris poll shows that 80% of the people are in favor of ERA, and urged the defeat of HCR 2009.

Rep. John Bower stated that he was a member of the legislature when the Equal Rights Amendment was adopted; that he supported it then and he supports it now; that without it, years could be spent in litigation to prove that the Constitution does not intend to discriminate.

Senator Jan Meyers stated that when the Constitution was drafted in Philadelphia in 1776, women were not invited and that women have been working for independence since that time; that legal rights were denied and it was 150 years before women had the right to vote. She stated that Kansas has a proud tradition where women are concerned, and that she believes the Kansas ratification to be the right thing.

Cora Hobbel, a member of the Governor's Commission on the status of women urged that this Resolution not be adopted. She stated that while the Civil Rights Act does offer some relief, there is such a backlog in the administering agency that it would be years before receiving any consideration.

Marian Warriner, stated that the League of Women Voters have traditionally studied issues, made decisions and act on the decision; that the matter of ERA was one of these issues, and urged the defeat of the Resolution.

Irene French, Kansas Federation of Republican Women, testified that there are 10,000 members in Kansas and a half million in the United States, and they urge that ERA not be rescinded.

Lou Graumann of Topeka, testified that ERA will liberate men even more than women, and urged defeat of HCR 2009.

Judy Runnels, Kansas State Nurses Association, urged that HCR 2009 be not adopted.

Ruth Wright urged that the committee resist efforts to rescind the ERA.

Mrs. Wilbur Leonard stated that the YWCA supports the ERA.

Jane Mortimer, spoke in favor of the ERA and against HCR 2009.

Numerous other individuals, both proponents and opponents, were present but time did not allow their appearance before the committee. Those who offered printed statements were given the privilege of having such statements incorporated into the minutes, and they are attached with other exhibits.

The meeting was adjourned.

STATE OF KANSAS

ARDEN DIERDORFF
REPRESENTATIVE 109TH DISTRICT
SMITH, JEWELL, OSBORNE,
ROOKS COUNTIES
P. O. BOX 66
SMITH CENTER, KANSAS 66967

TOPEKA

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: TRANSPORTATION
MEMBER: INSURANCE
INTERSTATE COOPERATION
LEGISLATIVE, JUDICIAL AND
CONGRESSIONAL APPORTIONMENT
KANSAS TURNPIKE AUTHORITY

HOUSE OF
REPRESENTATIVES

February 5, 1975

Mr. Chairman and members of the Federal & State Affairs Committee:

Thank you for allowing us to appear before your committee today. This committee is charged with the responsibility of making the decision of allowing the rescinding of the legislation that was passed in 1972, in fifteen minutes, by the Committee of the Whole, without prior hearings.

There is no question in my mind that if the legislation ratifying the action taken by Congress in 1972 had been properly discussed in committee before being presented to the Committee of the Whole, it is quite possible that we wouldn't be meeting here today, and a good probability that the legislation would never have been passed. As a result of hasty legislation, we are here today -- three years later -- to listen to both sides of the question.

I believe that the only argument for stopping the rescinding of the resolution is a lack of clear-cut legal proof that it can be rescinded. However, many people in the legal field say that a court test is needed. I would hope that this committee, in its wisdom, will give it favorable consideration so all the members of the legislature will have the opportunity to reconsider.

We have many people here today from all over the state. I am sorry time does not permit the opportunity for everyone to be heard, and for that reason, a few will speak for many.

X

STATEMENT BY THE COMMISSION ON THE STATUS OF WOMEN,
KANSAS STATE UNIVERSITY

TO: G. T. VanBebber, Chairman, Federal and State Affairs Committee,
Kansas House of Representatives

Subject: House Concurrent Resolution No. 20009

The Kansas State University Commission on the Status of Women wishes to go on record as opposing any and all efforts by the Legislature of the State of Kansas to recind its previous ratification of the Equal Rights Amendment.

We believe that ratification of the ERA by the State Legislature in 1972 was in the best interests of all the citizens of the State. While there has been some progress toward the goal of equal rights and responsibilities for men and women in recent years, there is overwhelming evidence that patterns of sex discrimination continue to permeate our social, cultural, and economic life. The case-by-case attack on laws and regulations has not succeeded in eradicating sex discrimination by federal, state and local governments. Only a Constitutional Amendment can provide the legal, moral, and symbolic guarantee necessary to change our laws.

February 5, 1975

Dorothy Thompson
Ex Officio Chairperson

X

A STATEMENT ON RESCISSION OF THE EQUAL RIGHTS AMENDMENT: MYTHS AND REALITY

February 5, 1975
Donna Fitzwater-President, Lawrence Women's Political Caucus

Sex discrimination has been an integral part of the laws, customs, and official practices of the United States. The Lawrence Women's Political Caucus believes that the Equal Rights Amendment will guarantee equal treatment for men and women under the law.

I urge all members of the House Federal and State Affairs Committee to recognize the "myths", surrounding the ERA, which have been so carefully constructed about its detrimental effects.

The members of the Lawrence Women's Political Caucus are quite proud of the fact that we are citizens of the state of Kansas. We are proud of our state's history and it's progressive attitude towards full citizenship for everyone.

We urge recognition of the fact that the ERA affects not just women's rights but all human rights. Henry Blackwell, in 1853, said, "I am the son of a woman and the brother of women. I know that this is their cause, but I feel it is mine also. Their happiness is my happiness, their misery, my misery. The interests of the sexes are inseparably connected."

Rescind the ERA? We urge you to consider the tragic error of the passage of House Concurrent Resolution 2009.

NEA-WICHITA • NEA-WICHITA • NEA-WICHITA • NEA-WICHITA

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Wichita, Kansas 67211

President - JEANNE A. PONDS
Executive Director - WILLARD MOORE
Assistant Executive Director - TASH SOGG
Financial Secretary - MRS. MAXINE HILTON

NEA-WICHITA POSITION PAPER ON EQUAL RIGHTS AMENDMENT

1. NEA-Wichita firmly opposes reconsideration of the ratification of the Equal Rights Amendment by the Kansas Legislature.

2. The Kansas Legislature, after informative and sufficient debate, has dealt with this issue. There is no basis on which reconsideration can rest. We do not see during this time when our elected representatives are faced with many crucial matters, that any needs will be served by dealing again and again with the ERA.

3. We reaffirm our belief that every individual has the right to equal treatment under the law. The key word is "individual". To categorize skills and abilities by sex leads to restrictions in opportunities for both men and women. To provide or deny economic benefits to either sex is equally unfair.

4. Nothing in the ERA denies rights to any individual. It extends the American concepts of equality to men and women alike. The attempts to defeat it by interpreting it otherwise do a disservice to both.

5. We, the officers and members of the Executive Committee and Board of Directors of NEA-Wichita, speaking for more than 2000 educators, urge the Kansas Legislature to refuse reconsideration of ratification of the Equal Rights Amendment.

TESTIMONY AT HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

TOPEKA, KANSAS February 5, 1975

By: Helen T. Foresman (Mrs. LeRoy F.)
2825 North 56 Street
Kansas City, Kansas 66104

I am president of the Archdiocesan Council of Catholic Women, Kansas City in Kansas, a federation of the Catholic women's organizations in this Archdiocese which encompasses 21 counties of Northeast Kansas; representing approximately 30,000 concerned women for the rights of others.

Today as a representative of this Federation I wish to express our support for House Resolution No. 2009, rescinding Kansas's ratification of the Equal Rights Amendment.

For the 50 years we have been organized in Kansas, our members have supported issues and laws for the advancement and protection of each individual regardless of sex, race or creed, and with this dedication we are concerned for each ones welfare.

Believing God created each individual person equal and that we have a duty to take an equal responsibility in this world; believing that the family life structure as we know in our culture is most vital to our civilization, our concern among many other aspects of the Equal Rights Amendment is the drastic and insidious changes which will be wrought by this Amendment on the family life in these United States.

Paul A. Freund of the Harvard Law School speaking to the fact that laws concerning women would become a constitutional issue to be resolved by the Supreme Court of the United States said "The range of such potential litigation is too great to be readily foreseen, but it would certainly embrace such diverse legal provisions as those relating to widow's allowance, the obligation of family support and grounds for divorce, the age of majority and the right of annulment of marriages, and the maximum hours of labor for women in protected industries. Not only is the range of the amendment of indefinite extent, but even more important, the fate of all this varied legislation would be left highly uncertain in the face of judicial review. Presumably, the amendment would set up a constitutional yardstick of absolute equality between men and women in all legal relationships."

One area we might consider is: Social Security benefits. When we wipe out the law that the husband must support his wife, then she has no right to collect Social Security benefits on his earnings. Certainly, when each person is treated equally regardless of sex, women will be the clear losers.

In the some forty years Social Security has been inexistance we have seen changes, but it remains the fact women are protected - recognizing the dignity and worth of the woman who makes her career in the home.

In writing the Social Security Act, since we in the United States had never had such a plan, the authors looked to several foreign countries, Germany particularily, for study and consultation before writing this legislation. Today looking at another foreign country whose men and women enjoy equality -- freedom of equality; women, the freedom of equality that she must place her children in a day care center and work in the chosen - government chosen career; freedom of equality to chose the type work one engages in so long as it is the government's wishes;

freedom of equality that women engage in all types of labor which we in our culture consider in the realm a man's work. As the niece of one of the Social Security authors, it seems to me we have the example of equality of the sexes in that foreign country and I feel sure we do not wish to pattern our lives and laws after them.

A Professor of Neurology at the Yale Medical School, Dr. Jonathan Pincus, concerned about the amendment's removal of a husband's responsibility said, "It seems to me that the removal of legal responsibility from a man for supporting a family, giving the family a name and protecting his daughters from the sort of influences the U. S. Army might have in store for them before marriage is likely to have some effect on the manner in which men relate to their wives and children and vice versa; those traditional ties will be weakened."

We feel a solid happy family life is the foundation of mental health and happiness and see the Equal Rights Amendment bringing social disruption, unhappiness and increasing rates of divorce and desertion. Weakening of family ties also leads to increased rates of alcoholism, suicide and sexual deviation.

At the present time we all are concerned about these problems which exist in our society and I do not believe we wish to release a Pandora's box which would further nurture these.

When God created men and women, He made physiological and functional differences between them. These differences confer upon men a greater capacity to perform arduous and hazardous physical tasks. This does not imply that either sex is superior to the other. It simply states the all important truth that men and women complement each other in the relationships and undertakings on which the existence and development of the race depend.

The former Senator from North Carolina, Sam J. Ervin, Jr stated, "From time whereof the memory of mankind runneth not to the contrary, custom and law have imposed upon men the primary responsibility for providing a habitation and a livelihood for their wives and children to enable their wives to make the habitations homes, and to furnish nurture, care and training to their children during their early years.

"In this respect, custom and law reflect the wisdom embodies in the ancient proverb that God could not be everywhere, so he made mothers. The physiological and functional differences between men and women constitute the most important reality. Without them human life could not exist. For this reason, any country which ignores these differences when it fashions its institutions and makes its laws is woefully lacking in rationality. Our country has not thus far committed this grievous error."

Time does not allow a review of many of the ramifications and inherent dangers to men's and women's rights in the Equal Rights Amendment. We would request you give serious consideration to the task at hand and would request you to adopt House Resolution 2009.

Thank you.

BY JAMES J. KILPATRICK

The Case Against ERA

Proponents of "women's liberation" will mount a determined drive in 1975 to win ratification of the pending Equal Rights Amendment to the Constitution. Because of legislative changes resulting from the November elections, the effort may well succeed. State legislators would be well-advised, in my own view, to stop, look and listen before they vote to write this amendment into the supreme law of our land.

The case in favor of ERA has been eloquently argued both in Congress and in the 33 states that already have voted to ratify. In coming months such organizations as the League of Women Voters and the Coalition of Labor Union Women will be lobbying hard for the proposition. The National Federation of Business and Professional Women's Clubs has raised $250,000 to finance a professionally managed campaign in eight target states.

As an abstract principle, the idea that "women should have the same rights as men" has undeniable political appeal.

The case against ERA has found few spokesmen and little organized effort. Mrs. Phyllis Schlafly's "Stop ERA Movement" is long on spunk but short on numbers. The opposition case merits a thoughtful hearing. In the opponents' view, the amendment—attractive as it seems at first glance—is (1) unnecessary, (2) uncertain and (3) undesirable. These arguments cannot be dismissed out of hand.

This amendment would write into the Constitution a single laconic sentence: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." If it is ratified by 38 states, the amendment would become operative two years later. Two states (Nebraska and Tennessee) have ratified but have attempted to rescind their approval. These rescissions probably are in vain. While the Supreme Court never has tackled the question squarely, the Court indicated in *Leser* v. *Garnett* (1922) and again in *Coleman v. Miller* (1939) that once a state's ratification is certified officially, judicial challenge, at least, is not likely to succeed.

In any event, whether five more or seven more states are needed, proponents are looking to North Carolina, North Dakota, Illinois, Missouri, Florida, Indiana, Nevada, Oklahoma and Arizona in the coming year. They have reason to be hopeful. In North Carolina six state Senators who once voted No on ERA have lost their seats; so have eight members of the North Carolina House. In North Dakota, where Democrats command solid majorities in both houses, proponents believe they can count 32 of the 50 state Senators and 55 of the 102 state Representatives. In Illinois, four legislators who are anti have been replaced by candidates pledged to vote in favor of ratification. In Missouri, Democratic caucuses indicate strong sentiment for approval.

In the face of this apparent trend, opponents interpose their three-point case:

1 *The amendment is unnecessary.* It is a sound proposition that constitutional amendment should be viewed as a political act of last resort. Ordinary statutes come and go. Supreme Court decisions can be modified or reversed; but the pending Equal Rights Amendment, once ratified, is there to stay. If time should demonstrate the unwisdom or the undesirability of ERA, only a monumental effort could achieve its repeal. Ratification is radical surgery. If any other effective way can be found to cure a political illness, surely the alternatives ought first to be tried.

Such alternative remedies already are being applied. The principal complaint of the women's liberationists goes to discrimination in employment. But Congress already has prohibited discrimination in employment by reason of sex. The Equal Employment Opportunity Commission labors unceasingly to enforce the law. Over the past 10 years the federal statute that established EEOC has produced a virtual revolution in employment practices, and the federal statute has been echoed in scores of remedial statutes at the state level. One by one, outdated state laws are being repealed.

Doubtless, many women still suffer discrimination in employment, but their problems, for the most part, are not matters of law but rather of law enforcement.

Case by case, the Supreme Court slowly is writing ERA into the Constitution anyhow. In *Reed* v. *Reed* the Court in 1971 nullified an Idaho probate law which said that in the administration of certain estates, "males must be preferred to females." Without a dissenting vote, the Court held the law void: "The

The Case Against ERA *continued*

arbitrary preference cannot stand in the face of the Fourteenth Amendment's command that no state deny the equal protection of the laws to any person within its jurisdiction. . . . To give a mandatory preference to members of either sex over members of the other . . . is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause."

In 1972 the Court buttressed its position. In one case, the Court forbade Massachusetts to discriminate against single persons. In another, it voted eight to one against a Louisiana law discriminating against illegitimate children. In a third, it nullified an Illinois child custody law. In the spring of 1973, Mr. Justice Brennan wrote the Court's eight-to-one decision, in *Frontiero* v. *Richardson*, having to do with unequal pay allowances for women in the armed forces. Classifications based upon sex, said the Court, are "inherently suspect."

This judicial trend continues. The Court has prohibited newspapers from using sexual classifications for "help wanted" ads. It has prohibited school boards from discriminating against pregnant teachers. In June of 1974 the Court put an end to unequal pay for men and women inspectors in a glass manufacturing company. During its current term, the Court will consider a challenge to a Navy regulation that discriminates between male and female officers. The Court will review a Utah statute that fixes the age of minority at 18 for women and 21 for men. The Court also will consider another Utah statute, this one dealing with child custody, that provides a "natural presumption that the mother is best suited to care for young children." Court observers are confident that the trends developed in *Reed* and *Frontiero* will be pursued.

The point is that by legislative enactment and by court decision, most of the invidious and unwarranted discrimination against women can be corrected. If the point is well taken, the radical surgery of an amendment to the Constitution can be avoided.

2. *The amendment is uncertain.* More than a hundred years have passed since there has been a constitutional amendment as vague and ambiguous as the pending ERA. As it now stands, the Constitution, when it speaks of "rights," speaks almost without exception in specific terms: There is the right of the people peaceably to assemble, the right of the people to keep and bear arms, the right of the people to be secure against unreasonable searches and seizures.

We know of the right to a speedy and public trial and the right to trial by jury. The Fifteenth, Nineteenth and 26th Amendments deal with the right to vote.

But as a matter of law—as a matter of actual application—what is meant by a constitutional commandment that "equality of rights under the law" shall not be denied or abridged on account of sex? No one knows. What is "right"? It is a lofty and resounding word, ordinarily linked to the great objects of a free people—to the rights of free press and freedom of religion, to the right of an accused to have counsel. If we assume that, in some jurisdiction, law requires that employers provide separate facilities labeled Men and Women, what of the effect of this amendment?

Does it create a *right* to a door labeled Persons? If so, ERA put a cavalier construction on a constitutional noun that has enjoyed more serious meaning.

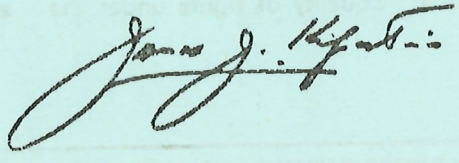
Whatever these rights may be, ERA says that no state shall deny or abridge them. The language stems from the first section of the Fourteenth Amendment. In constitutional shorthand, we are speaking of the doctrine of "state action." As the Fourteenth has been construed over the past century, and especially over the past two decades, the concepts of "state action" and "private action" have blurred. The concepts run together.

If all the gloss of the Fourteenth Amendment is to be transferred to the new ERA, a vast area of public private actions will be affected—quite how, we do not know.

3. *The amendment is undesirable.* It is a truism that we live under the rule of law; it is a deeper truism that we live under the rule of the past, for "the law," at any given moment, is the embodiment of all that has gone before. The laws that today govern prostitution, adultery, child custody, divorce, inheritance and age of consent have ancient roots. We look to the Judeo-Christian ethic. We draw on civilizations and societies long forgotten. By some rough process of divining public opinion, known as the democratic process, we have acquired a body of law—including laws that treat women differently from men—that mirrors and protects our prevailing political desires.

This body of custom and tradition, so far as it involves sexual mores, cannot be treated as if it did not exist. People care about these things. If this were not so, the people of Cocoa Beach, Fla., would not have voted last November to prohibit topless bathing by women on the local beaches. Lawmakers would not have written laws providing special benefits for women factory workers, for abandoned mothers, for aged widows. Such laws reflect political and social realities. The legal structure is not perfect—of course it is not perfect, and of course it constantly changes—but the basic structure has been there a long, long time.

It is hard to believe that at a given moment in March of 1972, when Congress approved the Equal Rights Amendment and submitted it to the states, the people knowingly were demanding that this essential structure be destroyed. It seems to me highly doubtful that the people desire any such thing as "unisex" in their law. But if five more states—or seven—ratify the pending amendment, that is what the people will get.



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The Phyllis Schlafly Report

VOL. 8, NO. 4, SECTION 2 | Box 618, ALTON, ILLINOIS 62002 | NOVEMBER, 1974

The Arkansas Study On E.R.A.

A research report entitled "The Effects of the Equal Rights Amendment on Arkansas Law" was recently prepared by the Arkansas Legislative Council for the Joint Judiciary Committee of the Arkansas General Assembly. Although the report is obviously biased in favor of ERA, and repeatedly departs from a factual presentation to argue for ratification, the facts it cites are so adverse to ratification of ERA that the *Arkansas Gazette* reported that the study "is apt to be used by opponents of the Equal Rights Amendment in the 1975 legislative session."

Indeed it will, because any factual presentation of the effects on ERA on state law always shows ERA to be devastating to the rights of women. Here is how the *Arkansas Gazette* summed up the report in a news story on August 25, 1974:

"A research report prepared by the staff of the Legislative Council suggests that about 50 Arkansas laws would be affected by the ratification of the proposed Equal Rights Amendment to the United States Constitution.

"Nearly all of them are statutes or state constitutional provisions that protect women in some fashion--advantages in the divorce, inheritance and property and criminal laws and extra protections in working conditions. . . .

"Here are the laws that the staff suggested would be questionable if the ERA were ratified:

"A man who obtains a divorce on the ground that he has been separated from his wife for three years on account of her incurable insanity must provide for her care and maintenance for life. . . .

"A wife is allowed maintenance and attorneys' fees during a divorce or alimony lawsuit. . . Not under ERA

"Mothers usually are presumed to have custody of minor children after divorce, and that legal presumption might be altered by the ERA (as well as the present) presumption of law placing the duty of providing financial support for children on the father even if the mother is given custody. . . .

Jury "The state constitution provides that women cannot be compelled to serve on a jury. . . She will under ERA

"A widow is entitled to half the real property of her husband for life if the estate is an ancestral one. . . .

"A woman has the choice of either taking her dower rights in the lands of her deceased husband or taking the lands given to her by will. . . .

"A wife is permitted to dispose of any property that she owns in her own name without obtaining her husband's consent, but a husband may not dispose of land during his lifetime without his wife's consent. . . .

"A woman may assert her dower rights in the land of her husband at a divorce if the divorce has not resulted from her misconduct. However, a man may receive his rights to lands of his wife only after her death. . . .

"If a widow is deprived illegally of possession of any lands assigned to her, she is entitled to double damages. These laws protect only women. . . .

"Many laws guarantee a widow dower and homestead rights upon the death of her husband but do not provide similar protection for the widower after after his wife's death. . . .

"A homestead of a deceased man may not be sold to pay his debts as long as the widow remains on it. . . .

"No married man may make a mortgage, sale or other document affecting the homestead unless the wife joins in the action. However, the wife can make such conveyances without her husband. . . ."

The Legislative Council report makes clear that, under present Arkansas law, wives and widows have a long list of tangible superior property and financial rights which would be wiped out by ratification of the Equal Rights Amendment.

However, revealing as this report is, it failed to cover all the rights that wives would lose under ERA. Arkansas lawyers have pointed out these additional areas where ERA would take away rights from women:

Arkansas law is very explicit in placing the primary obligation of support of the wife and children upon the husband, and imposes criminal penalties for failure to do so. (Ark. Stats. Anno. 41-204) This would be nullified by ERA since it imposes an obligation upon one sex that it does not impose equally upon the other.

Arkansas law provides that the wife's property is not liable for the debts of her husband. (Ark. Stats. Anno. 55-406) This statute would be nullified by ERA since only the wife has this right.

Arkansas law provides an absolute right on the part of the wife to a portion of her husband's estate, of which right the husband may not divest his wife, although the wife may dispose of her estate by will as she sees fit. (Ark. Stats. Anno 61-201 et seq.) ERA would nullify the wife's superior rights.

The Arkansas Legislative Council report, combined with the additions provided by other Arkansas lawyers, provides a devastating indictment of the Equal Rights Amendment. It shows so specifically how ERA will be hurtful to all women, and especially cruel to widows, that it should assure the continued rejection of ERA by the Arkansas Legislature. Excerpts from the Arkansas report are printed on pages 2, 3, and 4 of this newsletter.

Women do not want to be forced by husband to WORK--esp mothers

Support

Arkansas has studied it + sees the grave dangers

The Effects of ERA on Arkansas Law

Prepared for:

Committee on Judiciary of the Arkansas Legislative Council and *Joint Interim Committee on Judiciary, Arkansas General Assembly,* by the *Research Department, Arkansas Legislative Council*

Divorce

In order to secure a divorce in Arkansas, one of nine enumerated grounds must be pleaded by the plaintiff. One of the statutory grounds is living separate and apart by reason of incurable insanity of the husband or wife for a period of three consecutive years. The statute further requires that if the husband is the plaintiff in the divorce action, the court shall require him to provide for the care and maintenance of the insane spouse as long as she may live. There is no corresponding provision to provide financial assistance to an insane husband being sued for divorce, and this legislation may fall within the category of "Laws which confer a benefit, privilege or obligation of citizenship" to one sex.

Likewise, a wife is allowed maintenance and a reasonable attorney's fee during the pendency of an action for divorce or alimony. There is no statutory provision granting the husband maintenance or attorneys' fees in the case that the wife is the breadwinner of the family.

Ark. Stat. 34-1211 states that, "when a decree of alimony is entered, the court shall make such order touching the alimony of the wife and care of the children. . ." This statute does not specifically require that the children of the marriage shall remain with their mother, but the legal machinery is geared to this circumstance absolutely. The principle that a mother is presumed to be the best parent to have custody of the child has its roots in the old common law belief that a woman's place is in the home taking care of the children. However, this presumption is not required by statute, but is merely a presumption of law which the courts have followed through the years. Another similar assumption is that the duty to support minor children rests on the father--even if the mother is awarded custody.

Arkansas Statutes do not specifically allow or deny a husband to be awarded alimony upon a decree of divorce. The applicable statute (34-1211) merely speaks in terms of protecting the wife and children. The Courts in Arkansas have held that the remarriage of the wife is sufficient to terminate her right to alimony and support from her first husband. However, the remarriage of the husband has been held to be insufficient in itself to justify even a reduction of support payments. It appears that these decisions are based on the notion that a woman should not be required to support herself and that if she is married she is entitled to rely on her husband for support.

Jury Service

Article 3, Section 1 of the Arkansas Constitution provides that women shall not be compelled to serve on juries. Arkansas Statute 39-112 providing that "no woman shall be compelled to serve on any jury against her will" was repealed by Act 568 of 1969, but the constitutional provision remained intact. The authority of states to provide automatic exemptions from jury service to women has frequently been litigated. The U.S. Supreme Court upheld a Florida State Statute which required women to register and express their willingness to serve on a jury before they could be called for duty. In 1970, the Supreme Court held that a claim, alleging that a New York statute providing for the automatic exemption of women from jury service was unconstitutional because it discriminated against men, had no foundation. . . .

Descent and Distribution

Arkansas Statutes 61-201 through 21-215 set forth the interest the wife is entitled to as her dower right and the properties of the husband which are subject to dower rights. A widow is entitled to an estate of inheritance of one-third of the real property of her husband and one-third of his personal property in her own right if there are descendants. If there are no descendants, the wife or widow is entitled to one-half of the husband's real property in fee simple unless it is an ancestral estate (if it is an ancestral estate, she is entitled to a life estate in one-half of the real property against collateral heirs and one-third of the real property absolutely as against creditors) and one-half of the husband's personal property absolutely. As against creditors if there are no descendants, the widow is entitled to one-third of the real estate in fee simple (unless the estate is ancestral) and one-third of the husband's personal property absolutely.

A husband is allowed one-third of his wife's real property for life and one-third of her personal property absolutely if there are descendants as his curtesy right. If there are no descendants, he is entitled to one-half of her real property in fee simple and one-half of her personal property absolutely. If there are no descendants and the wife's estate is ancestral, the husband is entitled to one-third of the real property for life. As against creditors if there are no descendants, he is entitled to one-third of the real property for life and one-third of the personal property absolutely. The major difference in the interest a husband and wife receive is the wife is entitled to one-half of the real property of her husband for life if the estate is ancestral as against collateral heirs and the husband is only entitled to one-third of his wife's ancestral estate for life if there are no descendants. However, they both take equally as against creditors.

In Arkansas a woman has a choice of either taking her dower rights in the lands of her deceased husband or taking the lands devised to her by will in lieu of her dower rights, in the event that her husband died testate. A husband is not allowed the same election under the laws concerning his curtesy rights, and therefore, the E.R.A. would cause the provision which confers a benefit or privilege to one sex to be placed in issue.

A wife is permitted under Arkansas law to dispose of any property which she owns in her own name without her husband's consent or jointure. However, a husband may not dispose of land during his lifetime without his wife's consent. In order for the husband to receive his wife's consent to such a conveyance, the law requires her to be of full age, and if she is not, she must join with her father or guardian in such a conveyance. . . .

In addition, a woman's dower rights in the property of her husband do not depend upon his death. She may assert her dower and homestead rights at the time of di-

vorce from her spouse unless she is guiltyof misconduct which results in the divorce, in which case her dower rights are barred by statute. However, a husband may only receive his curtesy rights upon his wife's death, and the right is extinguished upon the granting of a divorce decree. Since dower and curtesy rights are not equally extended to males and females, the E.R.A. would probably result in a reconsideration of the pertient statutory provisions.

Rights of Widows

Arkansas Statute 62-708, concerning an assignment of dower, states that if a "petition (for allotment of dower) is filed against infants, (married woman), or persons of unsound mind, the guardian, committee or husband may appear and defend for them and protect their interests. . . ." The laws further provide that if a widow is deforced from her possession of any lands assigned and laid off to her, she is entitled to double damages. Both of these statutes protect only the woman's interests in the lands of her husband and they are likely to fall into the category of "Laws which confer a benefit, privilege or obligation of citizenship to one sex" and therefore would apparently have to be revised under the Equal Rights Amendment.

In regard to Probate and Grant of Administration, the law in Arkansas contains a great many provisions which guarantee a widow dower and homestead rights upon the death of her husband, but the statutes do not provide for the protection of a widower similarly situated. Article 9, Section 6 of the Arkansas Constitution allows a widow a homestead exemption in the event that the owner of a homestead dies. There is no specific constitutional provision allowing a widower the same exemption when his wife dies. Arkansas Statute 62-2501 allows a widow, in addition to her homestead and dower rights, to have assigned to her personal property of the decedent, tangible or intangible, to be selected by her prior to a sale by the personal representative of the value of $2,000 as against distributees, or the value of $1,000 as against creditors, to become her absolute property. In addition a widow is allowed such furniture, furnishings, appliances, implements and equipment as are reasonably necessary and an amount of up to $500 from the estate during a period of two months after the decedent's death. A widow is also allowed to remain in the dwelling house of her husband for two months without being liable for the rent, or free of all rent until her dower is laid off and assigned to her after the two-month period.

The homestead of a decedent may not be sold by a personal representative to pay the debts of the decedent while the widow remains on it. There is no prohibition for the sale of the homestead upon the death of the wife except Article 9, Section 3 of the Arkansas Constitution, which protects the homestead of a resident who is married or the head of a household from being subjected to a lien....

In the same manner Arkansas Statutes 19-922—19-942, which provide for a Pension and Relief Fund for Paid Non-Uniformed Employees in cities of the first and second class who chose to levy a tax for such fund, would also be suspect upon the passage of the E.R.A. These statutes provide for a payment of $50.00 per month to the widow or child under 16 of such an employee if he dies or is killed in the performance of his duty as long as she remains unmarried. If the employee leaves no widow or minor children, the payment goes to his financially dependent mother as long as she remains unmarried. The purpose of the law is to provide only women with financial assistance and therefore "limits the opportunities of one sex" or "confers a benefit to one sex."

Further financial protection is extended to women whose husbands are dead, permanently deserted or incapacitated for work by reason of physical or mental infirmities, or whose husbands are confined in the Arkansas Penitentiary under Arkansas Statutes 83-401—83-412. Financial assistance of up to $10.00 per month is provided to women who are citizens of the United States and the mother of a child or children. There are several conditions which must be met before the allowance is made. These conditions indicate that the focus of the benefit is on the child or children. However, a similar allowance is not granted to a man who meets the same conditions which are required for eligibility of women, and therefore the statute would be subjected to review under the E.R.A. The fact that the benefit terminates as soon as the woman remarries or the husband is discharged or paroled is indicative of the influence of the common law position of women and the desirability of protective legislation.

Property

Under Arkansas property law in regard to gifts to minors, the relevant statute defines an "adult" as a female who has attained the age of eighteen years and a male who has attained the age of twenty-one years. A "minor" is defined as a female who has not attained the age of eighteen years and a male who has not attained the age of twenty-one years. This statute falls into the category of "Laws which make age distinctions on the basis of sex" and would therefore be affected by the passage of the E.R.A.

Subject to certain specified exceptions, no married man may make a conveyance, mortgage or other instrument affecting the homestead unless his wife joins in the execution of such instrument. However, there is no prohibition on the wife regarding the conveyance of the homestead. This situation may amount to discrimination against a man and would therefore be affected by the Equal Rights Amendment. . . .

Criminal Penalties

Arkansas Statutes protect a married woman from prosecution when she acts under the threats, commands or coercion of her husband and require that the husband be prosecuted as the principal if a crime is committed. There is no protection under the law for a man acting under the threats, commands or coercion of his wife, and therefore the statute would probably be affected by the Equal Rights Amendment. The existence of such a statute implies that women are subject to the control and authority of their husbands and will obey all the commands of their husbands; since women are viewed as the weaker sex, the law must thus protect them from overbearing husbands. This statute is a relatively clear example of unequal treatment under the law based on sex.

In regard to the criminal statutes for the protection of children, a minor is defined as any male under the age of twenty-one years and any female under the age of eighteen years. This statute could be viewed as a "Law which makes age distinctions on the basis of sex." Arkansas Statute 41-1133 makes it unlawful for the owner or proprietor of a night club to permit any female under the age of eighteen to enter during business hours un-

less she is accompanied by her parent or guardian. There is no prohibition against males either under the age of eighteen, or otherwise. Conceivably, the E.R.A. would affect the validity of this statute because the distinction is apparently based solely on sex. . . .

Employment

Arkansas Statute 81-624 provides that "no employer shall discriminate in the payment of wages as between the sexes, or shall pay any female in his employ, salary or wage rates less than the rates paid to male employees for comparable work." There is no minimum wage law specifically for women in Arkansas since both men and women are included in the same minimum wage legislation.

Arkansas does, however, have a plethora of statutes which protect working women. Although these laws are referred to as "protective legislation," they do confer a benefit or a privilege on one sex and not the other and thus would purportedly fall under the purview of the Equal Rights Amendment.

Arkansas Statute 81-410 is an example of such "protective legislation." This statute requires employers of six or more men and women to provide a "suitable lunch room *for the women* employees separate and apart from the work rooms and toilet rooms; provided, that where it is impracticable to provide lunch rooms, *women* workers shall be allowed not less than one (1) hour for meal time, during which hour they shall be permitted to leave the establishment. (Emphasis added.) There is no provision guaranteeing a man a lunch hour or a suitable lunch room. In addition, the owner or proprietor of an establishment which employs three or more persons, all or part of whom are females, is prohibited from permitting "any influence, practices of (or) conditions calculated to injuriously affect the morals of such female employees." Since the statute is designed exclusively to protect the morals of females and not males, the E.R.A. would adversely affect its validity.

Arkansas Statute 81-601 prohibits the employment of a female, except for certain specified exemptions, for more than eight hours in any one day or more than six consecutive days in any one week unless she is compensated at the rate of one and a half times the regular rate at which she is employed. The employer must obtain a written permit from the Commissioner of Labor for any overtime of a permanent nature in excess of one hour a day; and he must post in a conspicuous place in every room in the establishment a "notice stating the number of hours such females are required or permitted to work on each day of the week, the hours of beginning and ending, (and) the recess allowed for meals." In addition, the employer is prohibited from employing a female for more than six hours continuously at any one time when there are three or more females employed without an interval of at least thirty minutes unless the employment ends on or before 1:00 in the afternoon and she is dismissed for the remainder of the day. Except for certain specified exceptions, the time allowed for lunch cannot be less than forty-five minutes. Furthermore, within the specified exceptions to the above statute, all female workers must be given "at least ten minute intervals for each of two rest periods, one being allowed in the first half of the work day and one in the last half of the work day, and the time allowed for such rest periods shall not be deductible from total time worked per day." The employer is also required to keep a time book or record of every female stating "the wages paid, the number of hours worked by her on each day of the week, the hours of beginning and ending such work and the hours of beginning and ending the recess allowed for meals."

Arkansas Statute 81-620 provides that in every establishment where "girls or women are employed, there shall be provided and conveniently located seats sufficient to comfortably seat such girls or women, and during such times as girls or women are not necessarily required by their duties to be upon their feet, they shall be allowed to occupy the seats provided." . . .

In regard to wages, Arkansas Statute 81-317 provides that "no assignment of or order for wages to be earned in the future shall be valid when made by a married man, unless the written consent of his wife to making such assignment or order for wages shall be attached thereto." The law does not, however, require a working woman to obtain her husband's consent prior to making an assignment of her future wages. The statute is based on the common law tradition that a woman's role is to remain in the home while the male must seek employment outside the home and provide financial support to the family. . . .

Arkansas Statute 81-1315, concerning Workmen's Compensation benefits in case of death, states that in the event the *widow* remarries before she receives the full benefits provided for her, she shall receive a lump sum equal to compensation for fifty-two weeks. There is no same or similar provision for widowers under the statute, and the E.R.A. would probably have an impact on the validity of such a provision. . . .

Arkansas Statute 84-2834.1 provides that the one-third of the amount of unredeemed pari-mutuel tickets at dog racing tracks in Arkansas received by the city in which the track is located shall be used for charitable purposes *only benefiting young females* of the city. This statute confers a benefit or privilege on one sex and denies the other sex the same advantage. Therefore, the Equal Rights Amendment would cause the validity of the statute to be placed in question. . . .

Quotes about ERA

"If I were a Senator, my reaction would be that I would vote against (the Equal Rights Amendment), and I would seek to accomplish the goals by additional legislation. . . . It would be great for lawyers, though."

Professor James J. White,
Michigan Law School

"The Urban League is not in favor of current proposals which could eliminate protective standards for women or which might adversely affect their economic welfare, health, privacy or special responsibilities as mothers."

Ms. Cernoria Johnson,
Washington Director, National Urban League

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Work against ERA; set public meeting

"I didn't want to get involved," Barbara Hanna truthfully explains about her first feelings concerning taking action against the Equal Rights Amendment. However her attitude changed as she explained, "If I was going to be a good moral person, let alone a Christian, I couldn't let it go by and not do anything." So she did something. She informed her friends, who informed their friends and together this group of more than 20 Eudora women have written Kansas legislators to express their opinions about the Equal Rights Amendment which states: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

These women plan to inform other individuals about the E.R.A. at a public meeting Monday evening, Feb. 10 at 7:30 in the Eudora City Hall. People from the surrounding area have also been invited to attend as well as various legislators. The meeting will include informative talks in addition to a panel discussion and interaction with those in attendance.

Why all this concern and work? For Mrs. Joe Hanna, Eudora, explained she has something to say and plans to do it. "I feel I have a right to express my opinions and follow through with what I think is right," she said. "In that way I'd say I'm 'liberated'."

But that's as far as it goes. "I'm against women's liberation to the extent that women must be forced into a condition (or situation) they do not wish to be in," she explained emphatically.

For example, she said she enjoys being a homemaker and would not want to be forced to join the ranks of working mothers. However an article by Jeanne Binstock called "Motherhood: An Occupation Facing Decline" (The Futurist, June 1972) states: "Women must be liberated to enjoy the fruits of other occupations, whether they want to be or not." This is not "liberation" as Barbara views it.

For Barbara this would mean losing freedoms and pleasures she now enjoys as a homemaker. She added that she does not want to loose other special considerations which are now given to women. These include preferential benefits women receive from Social Security or preferential benefits bestowed upon the mother to keep her children in a divorce case. Passage of the ERA could make women subject to the draft and combat duty if the draft were reinstated. She explained, "Presently, if the draft were to begin again women wouldn't have to join the service but could if they wished to. Under the ERA women would have to join."

There are other issues which could be changed by the ERA, she commented. Passage of the ERA would force insurance companies to equalize insurance rates for males and females. (Presently, many women receive lower rates for automobiles and life insurance.) Also, the amendment will overturn present state laws which prohibit marriage between persons of the same sex, laws clearly discriminate on the basis of sex.

According to constitutional authority Prof. Paul Freund as stated in the Yale Law Journal, January 1973: "The stringent requirements of the proposed Amendment argue strongly for removal of this stigma by granting marriage licenses to homosexual couples."

Other effects under ERA will make permanent and finalize abortion on demand. With the 1973 Supreme Court ruling legalizing abortion, the states are allowed to somewhat regulate or prohibit abortions. However, under ERA these remaining state anti-abortion laws would not be legal, since they are obviously designed on the basis of sex, according to Dean Clarence Manion, formerly of Notre Dame Law School.

One of the underlying aspects of the ERA which Mrs. Hanna strongly opposes is that the control would be in the hands of the United States government, not with each individual state. She is against this action because, for one reason, if it passes and then people decide they want to change it, "it can't be changed until another amendment is passed and this would take several more years."

Barbara's first step in getting involved came when she decided to do some research on her own. She read all she could about the subject, which included reading the Congressional Record and obtaining information from the Library of Congress. Then when she was completely satisfied she began to contact her friends who contacted other women.

The group's first meeting was Nov. 12. About 20 women came to the meeting which was followed by three other gathers at which the women received information about the ERA and also got the addresses of people to write. Several working women who also became involved were not able to attend the meeting, but did write letters. The group as a whole wrote to all the Kansas legislators concerning the case against the ERA and in favor of rescinding action in Kansas.

Some of the women in the group are available to speak to other interested groups concerning the amendment. As individuals the women have paid for their own stamps and phone calls, in addition to spending their time. The only money they have collected among themselves is used to purchase information sheets and materials which are given out concerning the amendment.

"I think we've accomplished an awful lot for the short period in which we've been working," explained Mrs. Hanna. "We haven't received as many replies as we had hoped, but maybe that was because we wrote to legislators who are not within our district." But the replies did come, some for the amendment, others against it and still others to whom the women were able to explain their case and even influence. The women learned interesting things from some of the replies. One was that Kansas legislators did not do very much studying of the amendment before it was passed six days after the United States Congress passed it on March 22, 1972.

Some of the concerned women who belong to one church also decided to write letters to their other church congregations throughout the state asking them to write to other churches in other states. In the three weeks since the women wrote to approximately 190 churches, they have received 17 replies and continue to get them daily, according to Mrs. Hanna.

What do the husbands of these women think? Mrs. Hanna spoke about the feelings of her husband. "He isn't opposed to the basic ideals for which I'm striving."

She added, "I don't want anyone to get the idea that we are a bunch of radical women." The group is made up of homemakers who have a concern for future results of the ERA. Many of them have daughters.

Mrs. Hanna went on to explain that she sees two groups in favor of the Equal Rights Amendment. First, there are the women who are "radical", wanting all the effects the amendment can bring. Second, Mrs. Hanna sees a group of "business women who are misled because they think this is the way they will be able to get equal pay for equal work." However, the ERA will not do anything in the areas of jobs, pay, training or promotions, explained Mrs. Hanna. Even its chief sponsor in the U.S. House, Rep. Martha Griffiths, admits this.

However there are many existing federal and state laws which require equal jobs, pay, training and promotions for women. A few of these are the Civil Rights Act, the Equal Opportunities Act, the Equal Pay Act and Comprehensive Employment and Training Act. Mrs. Hanna added, "These laws are taking a while to be enforced, but once women become aware there won't be any problems and they will receive equal pay." She asked, "How could the amendment make it any better? I feel that these women will join us and be against it (the ERA) once they become aware."

Mrs. Hanna had a comment concerning the recent statement by Kansas Attorney General Curt Schneider about the state's ability to rescind their earlier action. She explained, "I feel it is up to (State) Congress whether or not to rescind the amendment and the Attorney General should not try to influence them." She added that the women have received information from informed professional sources explaining that the state does have the authority to rescind their earlier action.

Professor Charles L. Black, Jr., Luce Professor of Jurisprudence at the Yale University Law School, a constitutional authority, has made a comment concerning this matter which is recorded in the Congressional Record (May, 1973) He states:

"I warmly favor the Equal Rights Amendment. I'm strongly for it. But I'm opposed to such 'Mickey Mouse' tactics as claiming that, once a state has ratified the amendment, it's locked in forever, as in a lobster trap. Clearly, a state can change its mind either way before the amendment is officially declared to be ratified."

Barbara and the other Eudora women explain their views as "wanting the freedom to be women." In this case, it means expressing their views against ratification of the Equal Rights Amendment.

Statement given by Mrs. Debra Barnes Miles, Miss America 1968,
To the Federal and State Affairs Committee of the House of Representatives
Supported by proponents of Resolution No. 2009 from Eudora, Kansas.

We propose the passage of Resolution 2009, rescinding the Equal Rights Amendment (ERA) because:

1. Either the ERA will wipe out the right of wives to receive Social Security benefits based upon her husband's earnings, or it will give men equal rights to receive benefits based on his wife's earnings. We can be reasonably sure that since the Social Security System is in financial trouble already, (U.S. News and World Report, "Will the Social Security Bubble Burst?"; Nov. '74, Pages 28-30.) that it could not stand the pressure of additional benefits being given. The only alternative interpretation of the law would be to say that no spouse may receive benefits based on his or her spouse's earnings. We cannot even comprehend the drastic effect that this measure would have on our nation's economy.

2. The ERA would allow homosexual marriages, and would give them legal rights to adopt children, teach public school; etc. In a study called "The Legality of Homosexual Marriage", published in the Yale Law Journal, it is stated that under the ERA's stringent requirements, "sex is to be an impermissible legal classification." Therefore, "sexist" language(e.g.man, woman, husband, etc.) would be replaced with sex-neutral language(e.g. person, spouse). The law that defines a marriage as a union of a man and a woman would have to be amended to read; "between a person and a person". All marital rights of these persons must also be preserved, including the adopting of children.

3. The ERA would force the drafting of women. The U.S. Constitution gives to Congress the power "To raise and support armies..." which includes the possible drafting of women. However, under the ERA, Congress would be forced to draft women to insure equal rights. The draft boards would be required to call a "person" to military service according to the date registered only, and would have no legal right to call or not to call because of sexual classification. Nor would women have legal rights to preferential duty, (civilian instead of combat). Your daughters and granddaughters, even if they are recently married or have small children can be forced, to spend two years away from their husbands and families in case of war (and with the tensions in the Middle East, who can tell when that will be?)

There are many other valid reasons we are encouraging you to vote to rescind the ERA; but for the three we've mentioned alone, you can see the great necessity of immediate action. If you have received more letters for the ERA than against, it is because the majority of people still are ignorant of what the proposed amendment really is. Most people believe it will mean equal pay for equal work, which it will not. This right is already guaranteed under The Civil Rights Act of 1964, Subchapter VI; Equal Employment Opportunities (42 U.S. Code 2000e-2), and The Equal Opportunities Act of 1972 (Public Law 92-251).

If you or any other members of the Kansas Legislature are unsure of how the majority of the people of Kansas feel, we challenge you to inform the people and once they are informed, poll their opinions. You will conclude that the majority want to rescind the ERA.

WARNING!

WARNING!

EQUAL RIGHTS AMENDMENT IS DANGEROUS TO WOMEN!!!

Most people think the Equal Rights Amendment (E.R.A.) means equal pay, jobs and education for women, but these areas are already covered by existing laws and the E.R.A. will have NO EFFECT on them! Instead, under the guise of "equality," the E.R.A., at either a state or federal level, seeks to strip from women the many privileges traditionally granted to women by law. To find out why E.R.A. should really be termed a *Loss of Rights Amendment*, check the facts! And the facts are . . . . . .

E.R.A. WILL HURT WIVES!

Before E.R.A. reared its ugly head, every one of the 50 states legally required a husband to support his wife. Constitutional scholar Prof. Paul Freund of Harvard Law School points out that the E.R.A. will be contrary to all these state laws by making a husband liable for support of his wife ONLY IF SHE IS UNABLE TO SUPPORT HERSELF! (Harvard Civil Rights-Civil Liberties Law Review, March 1971)

Already, the effects of E.R.A. on wives can be seen in Colorado, where under a state E.R.A., the law that required a husband to support his wife and family was declared unconstitutional!

Texas, too, has felt the effects of its state E.R.A. In 1972, H.B. 784 was introduced in the Texas legislature for the purpose of conforming Texas laws to the E.R.A. This bill would have required a husband to support a wife ONLY IF SHE WAS UNABLE TO SUPPORT HERSELF! H.B. 784 passed committee but was never voted on in the House. However, this change will have to be made under a state or federal E.R.A. once our present law is tested in a Court.

E.R.A. WILL MAKE WOMEN SUBJECT TO THE DRAFT AND COMBAT DUTY!

The position of both the Justice Dept. and the Defense Dept, is that women will be subject to the draft under E.R.A. (Congressional Record, March 22, 1972) "Deferment policy could provide that one, but not both, of the parents would be deferred." (Yale Law Journal, April 1971)

Even though the draft has been temporarily suspended, it can be reactivated at any time. Rep. F. Edward Herbert, Chairman of the U.S. House Armed Services Committee, predicts that the draft will be reinstated within 3 years. If E.R.A. is in effect, both males and females will be drafted. "Women will serve in all kinds of units, and they will be eligible for combat duty." (Yale Law Journal, April 1971) WACs at Fort McClellan, Ala. are already being trained in weaponry and combat!

"Even if segregation of living quarters and facilities were allowed under the Amendment, during combat duty in the field there are often, in effect, no facilities at all, and privacy for both sexes might be impossible to provide or enforce." (General Counsel for Defense Dept., J. Fred Buzhardt) Fort Dix, N.J. has recently begun sexually integrating its barracks!

E.R.A. WILL FINALIZE ABORTION ON DEMAND!

Even with the 1973 Supreme Court ruling legalizing abortion, the states are allowed to somewhat regulate or prohibit abortions. Under E.R.A., these remaining state anti-abortion laws would not be legal, since they are obviously designed on the basis of sex. (Dean Clarence Manion, formerly of Notre Dame Law School)

That Supreme Court decision can now be legally changed in any one of several ways, such as a change in the Court, Congressional action, etc. But the E.R.A. will make permanent and finalize abortion on demand. "It is the hope of the abortionists that E.R.A. will put into the Constitution what they now have only by a split Supreme Court decision." (Prof. Joseph Witherspoon, Texas U. Law School)

E.R.A. WILL LEGALIZE HOMOSEXUAL "MARRIAGES"!

All states have laws prohibiting marriage between persons of the same sex. Because these laws clearly discriminate on the basis of the sex of one of the partners, these laws will be overturned by E.R.A. "The stringent requirements of the proposed Amendment argue strongly for removal of this stigma by granting marriage licenses to homosexual couples . . ." (Yale Law Journal, January 1973) Agreeing with this conclusion is constitutional authority Prof. Paul Freund.

And if these couples "marry," will they not be eligible to adopt children, as are normal married couples? After all, denying adoption to couples because "Mommy" is a male, is clearly a discrimination based on sex, and thus would be illegal under E.R.A.! A Minnesota couple, both male, have applied to several adoption agencies for a child; to date their applications have not been refused!

E.R.A. WILL ELIMINATE SEPARATE SCHOOL RESTROOMS FOR MALES AND FEMALES!

Just as racially segregated schools and restrooms were outlawed as a discrimination based on race, so sexually separate public schools and restrooms will have to end. (Prof. Phil Kurland, Editor Supreme Court Review)

Those who favor E.R.A. claim that a Constitutional "Right of Privacy" will prevent this from happening. But the word "privacy" never appears in the Constitution! Those for E.R.A. quote the "young but fully recognized Right of Privacy" established in the 1965 ruling, Griswold vs. Connecticut. However, this case dealt, not with restrooms, but with birth control used by married couples! The Attorney General of Virginia stated that this Court decision dealt with the sanctity of the marital relationship and nothing more!

Supreme Court Justice Potter Stewart says, "I can find no such general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever decided by this Court."

Texas H.B. 784, previously mentioned, also involved this issue, as it would have eliminated the provision for a "women only" restroom in county Commissioners Court and provided for a "custodian" (which can be of either sex), rather than a matron as is now required.

It can't happen? The U.S. Dept. of Labor is preparing to abolish the federal requirement that employers provide separate toilet facilities for men and women. (Woman Constitutionalist newspaper, January 13, 1973)

E.R.A. WILL CHANGE SEX-CRIME LAWS!

Many sex-crime laws are based on the ideal of protecting women from predatory males. These laws will be outlawed under E.R.A.! "Seduction laws, statuatory rape laws, laws prohibiting obscene language in the presence of women . . . The Equal Rights Amendment would not permit such laws, which base their classification . . . on social stereotypes." (Yale Law Journal, April 1971)

Again, we see changes called for in Texas through H.B. 784. This bill, written to conform Texas laws to a state E.R.A., would have removed as an aggravated assault-or-battery crime the act of an adult male committing serious bodily injury to a female!

(over)

E.R.A. WILL INTERFERE WITH CHURCH DOCTRINE!

Because churches and their affiliated institutions enjoy a tax-exempt status granted by the federal government, churches can be subject to the E.R.A. Thus, any church whose beliefs include not ordaining women as ministers or priests may lose its tax-exempt status unless it changes its policies and violates its doctrines! (State Rep. Larry Vick, Houston attorney and former minister)

Those who want E.R.A. claim that the "separation of church and state" doctrine will prevent this from happening. But a basic premise of Constitutional law is, "The most recent constitutional amendment takes precedence over all other sections of the Constitution with which it is inconsistent." (Sam Ervin, Jr., former U.S. Senator and noted constitutional attorney) Thus, E.R.A. could nullify the "separation of church and state" doctrine! Already, a law suit is threatened against their church by women whose ordination as priests is not recognized by the Episcopal Church!

E.R.A. WILL HURT SCHOOLS!

No public school will be allowed to operate for boys only or for girls only under E.R.A. Neither will any private or church-supported school which receives any federal funds. Even private schools which do not take federal money but have a tax-exempt status will be threatened! Bob Jones University of Greenville, S.C., for example, recently lost its tax-exempt status for alleged discriminations, even though BJU is totally privately funded! Now it must pay taxes on its buildings and and land, and donations to BJU are no longer tax-deductible for the donors!

High schools, colleges and universities will be required under E.R.A. to provide equal athletic opportunities and facilities for males and females. This may well mean the end of intercollegiate sports as we know them! "There is no way that we can provide . . . equal programs for men and women in intercollegiate athletics without eliminating a major portion of the existing programs. We simply do not have the funds to do both." (Phillip Shriver, President, Miami of Ohio Univ.) Already, Texas A&I University has been forced to eliminate badminton and gymnastics!

E.R.A. WILL NOT HELP DIVORCED WOMEN!

Most courts now award custody of children to the mother, unless she is unfit. But E.R.A. will change this custom. "In 90% of custody cases, the mother is awarded the custody. The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent." (Yale Law Journal, April 1971)

E.R.A. WILL NOT HELP WORKING WOMEN!

There are many existing federal and state laws which require equal jobs, pay, training and promotions for women. A few of these are:

(1) The Civil Rights Act
(2) The Equal Opportunities Act
(3) The Equal Pay Act
(4) The Comprehensive Employment and Training Act
Etc., etc., etc.

Women are using these laws to get the equal Rights now.

E.R.A. will do nothing in the areas of jobs, pay, training or promotions. Even its chief sponsor in the U.S. House, Representative Martha Griffiths, admits this!

E.R.A. will, however, wipe out protective labor legislation which protects the working woman from being exploited. Those who favor E.R.A. try to say that protective laws will be extended to men also, but the facts show otherwise! For example, in California, the Bank of America was giving taxi rides to its female employees who had to work after dark. This was a thoughtful gesture to protect the women against rapes, muggings, etc. A state court ruled that the bank was discriminating against male employees. Rather than give a similar but unnecessary service to men, the Bank stopped the taxi rides for women!

E.R.A. IS UNNECESSARY! Yes)!

In addition to the many laws already mentioned which deal with jobs, pay, etc., every person in this country is protected by the 14th Amendment of the U.S. Constitution, which requires due process of the law for all.

Those who favor E.R.A. try to claim that the 14th Amendment has not been used and so E.R.A. is needed, but again the facts prove them wrong! The 14th Amendment has been used many times in the last few years to give women their full legal rights in such areas as jury duty, administering estates, educational opportunities liabilities, etc. There is no legal right that women do not now which E.R.A. can give them. But E.R.A. will definitely jeopardize women's privileges under the law!

E.R.A. IS CHANGING TEXAS LAWS!

As we have shown in several examples from H.B. 784, the E.R.A. will bring about drastic changes in Texas laws. Even though the state E.R.A. has been in effect for two years, its full effects have yet to be seen, for few, if any, cases have been taken to court to test the laws. Yet, some changes have occurred. For instance, Texas Attorney General John Hill ruled in November, 1974, that due to E.R.A., a married woman in Texas does not have to use her husband's name legally. This bears out the prediction of the Yale Law Journal, April 1971.

The new Texas Family Code has made a wife subject to imprisonment if she fails to support her necessitous husband. Before E.R.A., only a husband was thus punishable!

As other laws are thrown out by the Courts or changed by the legislature to conform with E.R.A., many more changes can be expected if E.R.A. remains in effect in Texas!

E.R.A. IS SCARY – BUT THESE AREN'T SCARE TAC

Those who favor E.R.A. have been very critical of those who oppose this dangerous Amendment. They have, for example, accused us of using scare tactics. While most people are upset when they find out what E.R.A. really means, these facts are thoroughly documented and to call them "scare tactics" is simply an attempt by those who want E.R.A. to smear those who do not want these radical changes Smear tactics like these have been used for years: When you are weak on the facts, attack your opponent! That pretty well summarizes the smear tactics of those who favor E.R.A.!

E.R.A. CAN BE REPEALED!

If 38 states ratify the federal E.R.A. it will become the 27th Amendment to the U.S. Constitution. 33 states have approved E.R.A., but Nebraska and Tennessee have since rescinded (repealed) their ratifications. Texas can too!

"Clearly a state can change its mind either way before the amendment is officially declared to be ratified." (Prof. Charles Black, Jr., Yale Law School)

". . . I have a great deal of respect for Prof. Black and if he said that the State can withdraw its approval of the amendment, then I assume the State can." (David Kendall, Texas Attorney General Executive Assistant)

WILL E.R.A. BECOME LAW? We Pray no

Only YOU can decide that. If you do not want the dangerous Equal Rights Amendment, write your State Senator and Representative TODAY and ask them to vote to rescind E.R.A.! The Women Libbers have convinced the state legislators that the small noisy minority who is pushing for E.R.A. represents the majority of American women. Only if YOU and many of your friends write, call or talk with your state legislators will they realize that E.R.A. is NOT what most women want! YOU and I must make our voices heard: write your State Senator and Representatives NOW!!! The responsibility to stop E.R.A. rests with YOU!!!

To find out who your State Senator and Representative are, call your county clerk or local political party headquarters.

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COMMITTEE TO RESTORE WOMENS RIGHTS

717 BURKSHIRE, CORPUS CHRISTI, TX. 78412

(over)

A STATEMENT ON RESCISSION OF THE EQUAL RIGHTS AMENDMENT: MYTHS AND REALITY

February 5, 1975
Donna Fitzwater-President, Lawrence Women's Political Caucus

Sex discrimination has been an integral part of the laws, customs, and official practices of the United States. The Lawrence Women's Political Caucus believes that the Equal Rights Amendment will guarantee equal treatment for men and women under the law.

I urge all members of the House Federal and State Affairs Committee to recognize the "myths", surrounding the ERA, which have been so carefully constructed about its detrimental effects.

The members of the Lawrence Women's Political Caucus are quite proud of the fact that we are citizens of the state of Kansas. We are proud of our state's history and it's progressive attitude towards full citizenship for everyone.

We urge recognition of the fact that the ERA affects not just women's rights but all human rights. Henry Blackwell, in 1853, said, "I am the son of a woman and the brother of women. I know that this is their cause. but I feel it is mine also. Their happiness is my happiness, their misery, my misery. The interests of the sexes are inseparably connected."

Rescind the ERA? We urge you to consider the tragic error of the passage of House Concurrent Resolution 2009.

TESTIMONY - FEDERAL AND STATE AFFAIRS COMMISSION

TOPEKA, KANSAS FEBRUARY 5, 1975

I am the Kansas Province Director for the National Council of Catholic Women, a federation of local, diocesan, state and national organizations whose combined membership totals ten million women. I am here today as a representative of the Catholic women of Kansas, speaking in favor of the resolution to rescind the vote for the Equal Rights Amendment.

For 54 years NCCW has consistently supported legislation that safeguards womens right's, including the 1963 Equal Pay Act, The Civil Rights of 1964, and the Equal Opportunity Act of 1972 which forbids discrimination in every aspect of employment, including hiring, pay and promotions.

It is precisely because of our concern for women's rights that the National Council opposes the Equal Rights Amendment. They agree with eminent constitutional authorities that the Amendment will take away far more important rights than it will ever give.

Professor Paul Freund, of the Harvard Law School states, "That the proposed Equal Rights Amendment would open an era of regrettable consequences for the legal status of women in the country is highly probable. That it would certainly open up a period of extreme confusion in Constitutional Law is a certainty! The Amendment expresses noble sentiments, but I am afraid it will work much mischief in its actual application. It will open a Pandora's box of legal complications.

"If anything about the Amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court. Every statutory and common law provision dealing with the manifold relations of women in society would be forced to run the gauntlet of attack on constitutional grounds.

"The purpose and effect of the Amendment will be to destroy <u>forever</u> the right of Congress and of the 50 States to pass any law that differentiates in any way between males and females."

Professor Philip Kurland of the University of Chicago Law School declares, 'It is a demand for unisex by constitutional amendment'.

Safeguards now contained in statutory and common law would be wiped out. According to an article in the YALE LAW JOURNAL of April 1971, concerned with the consequences of the Equal Rights Amendment, there would be drastic changes in many areas:

MILITARY SERVICE

> "A woman will register for the draft at age eighteen, as a man now does ... women will serve in all kinds of units and they will be eligible for combat duty ... neither the right to privacy nor unique physical characteristics justifies different treatment of the sexes with respect to voluntary or involuntary service."

cont'd

TESTIMONY - FEDERAL AND STATE AFFAIRS COMMISSION

DOMESTIC SERVICES

"In all states husbands are primarily liable for the support of their wives and children. The child support sections of the criminal nonsupport laws ... could not be sustained where only the male is liable for support."

CRIMINAL LAW

"The Equal Rights Amendment would not permit such laws (seduction, Statutory rape laws, prostitution, etc.) which base their sex discriminatory classification on social stereotypes. Courts would generally strike down these laws rather then extend them to men."

PROTECTIVE LABOR LAWS

"Under the Equal Rights Amendment, courts are not likely to find any justification for the continuation of such laws."

Mrs. Laurel Burley, a librarian at the University of California, who made an indept study of the consequences of the ERA on labor laws providing advantages to workingclass women states, "The major danger ... lies in the fact that it would in one swoop invalidate all protective legislation enacted by the States to protect women from exploitative employers."

In testimony before the Senate Judiciary Subcommittee in 1970, the AFL-CIO Legislative Director, Andrew J. Biemiller, voiced Labor's long-standing opposition to the 'essentially negative Amendment'.

Mr. Biemiller testified that the practical effect of the Amendment could wipe out State labor standards that apply specifically to women rather than to accomplish extension of coverage to men. He contended that the Amendment created no positive law in itself to combat discrimination against women.

In May 1970, Mrs. Norman Folda, then President of the National Council of Catholic Women, testified in opposition to the Equal Rights Amendment. She requested that the following statement based on resolutions passed at the Conventions of the National Council of Catholic Women be entered in the record of the hearings of the Senate Judiciary Sub-Committee in Washington:

"Again we strongly reiterate our opposition to the proposed Equal Rights Amendment to the U. S. Constitution as a threat to the nature of woman which individuates her from man in God's plan for His creation.

"Under the guise of equality, the proposed Amendment would in reality wipe out the many legal safeguards

cont'd

that protect woman's position in the family. Under the proposed Amendment maximum hours and minimum wage laws for women, widows' allowances, alimony and support payments, and the basic responsibility of man to provide for his family would be placed in jeopardy.

"Because it proposes an idea of woman foreign to the Christian concept of woman's co-equal, but individual dignity with man, and because it would destroy the legal safeguards women have secured through the years, we oppose the Equal Rights Amendment."

We respectfully ask this Committee to consider and to accept this Resolution to rescind the vote on the Equal Rights Amendment so it will not become a part of the Constitution of the United States.

By Pauline Carlson (Mrs. V. A.)
4005 Stratford Road
Topeka, Kansas 66604
272-8326

February 5,1975

Honorable G.T. VanBebber and Members of the Federal and State Affairs Committee:

I am Edna M. Archer of 2135 Payne, Wichita ,Kansas. I represent the Church Women United of Wichita. The National Church Women United and My local Wichita Church Women United have endorsed equality between men and women. I come to ask in their behalf that House Concurrent Resolution No.2009 notlbe reported favorable for we support the Equal Rights Amendment.

I am a retired teacher and have been through this equality right needs being a widow early in life with two small boys to support and educate. Our prayers are that each of you will see the needs to not let this Resolution be presented on the floor.

Edna Archer

X

To the Honorable G.T. Van Bebber and members of the Federal and State Affairs Committee:

I am Annabelle Haupt, 1006 Amidon, Wichita, Kansas. I am president of the Wichita Women's Political Caucus.

The National, Kansas, and Wichita Women's Political Caucuses strongly support the Equal Rights Amendment. These organizations have been proud that Kansas was the seventh state to ratify the Equal Rights Amendment on March 28, 1972.

The Kansas Legislature has been moving in the direction of correcting the language of statutes to include both men and women as equals. By this we are encouraged - - Thank you, and please keep up the good work.

As citizens of this nation, the members of the Women's Political Caucus want to be a part of those people who support equality of men and women for all the states of the Union.

The Equal Rights Amendment is needed to bring the same rights of equality to all women in all the states.

For these reasons, the Women's Political Caucus hopes that this committee will refuse to rescind the action taken on House Concurrent Resolution No. 1155.

Thank you.

STATEMENT
by
Clyde Schinnerer
Scott City, Kansas

at the hearing of the
Committee on Federal and State Affairs
Topeka, Kansas
February 5, 1975

concerning

HCR 2009, a resolution to rescind HCR 1155, concerning the Equal Rights Amendment (ERA)

* * * * *

Mr. Chairman, my name is Clyde Schinnerer of Scott City, Kansas, where I own and operate a farm, and I am appearing to urge this committee's support of HCR 2009, a resolution to rescind HCR 1155. I believe the ERA has many inherent dangers that most people have not considered, only now the people who would be affected are beginning to understand the magnitude of what is being proposed.

One very serious matter would be the continued separation of church and state. There are many religious bodies who still adhere to the Biblical doctrine that only men are to be preachers and elders. (1 Timothy 2:11, 12; 3:2; Titus 1:5, 6). It would be a violation of the principle of church and state and certainly this proposed Amendment would take precedence over any previous amendments that conflict with it. Senator Sam Ervin, Jr., former U.S. Senator and noted constitutional attorney said, "The most recent Constitutional Amendment takes precedent over all other sections of the Constitution with which it is inconsistent."

Certainly, we don't want the women of our great land to be mistreated, denied their proper rights, and to not have their rightful place in the human race. But let's look closely. What inequities in the laws are causing abuse to women in Kansas? If the proponents of ERA can name even as many as five inequities in the laws, let's change those laws rather than giving the Federal Government jurisdiction in family affairs. Laws such as the Civil Rights ACt of 1964, The Equal Opportunities Act of 1972, and many others give protection against discrimination at all levels. If the ERA is ratified and becomes a part of the Constitution it will eliminate many of the privacy protection laws we now have. Sexual discrimination will be just as illegal as racial discrimination. Let the first man be thrown out of a ladies restroom and the court will have to decide that he cannot be discriminated against. Let me quote from the Dan Smoot Report, March 13, 1974, "In many "Civil Rights" decisions involving racial matters, the courts have declared the "separate but equal" doctrine illegal."

Let me point out to you that the ERA will take away states rights, Kansas and all the other 49 states, in equality rights and gives them to Congress. The States will forfeit all rights of legislation, giving Congress a "blank check" in legislating laws to implement the Amendment and the Supreme Court sole authority to interpret those laws. We find there were no qualifying statements given when Congress passed the ERA on March 22, 1972. "ERA is much like a single broad-spectrum drugh with uncertain and unwanted side effects as opposed to a specific pill for a specific ill." Paul Freund, Harvard Civil Rights-Civil Liberties Law Review, Vo. 6., No.2, March 1971.

Those proponents of ERA are pressing the issue that a State Legislature cannot rescind their ratification and yet are working very hard to get states to ratify who have already rejected the Amendment as Oklahoma did just two weeks ago. Their's is a double standard. There is nothing in the U.S. Constitution or any Federal or State laws, or any decision of the U.S. Supreme Court which denies this right to a State Legislature. ERA proponents often cite the 14th Amendment in their claim that it is illegal for State Legislatures to rescind a previous ratification. However, no one who knows anything about the history of the ratification of the 14th Amendment could possibly cite it as a legal precedent for anything. The Coleman v. Miller case (1939) is often times referred to but here the action was the other way. Kansas had rejected the proposed child-labor Amendment to the U.S. Constitution and then 14 years later ratified it. It was held then that this was illegal and given to the Supreme Court for decision. They muddied the water somewhat, but the ultimate decision was that the Kansas Legislature could reverse itself and change its mind after it had previously acted on ratification of a Constitutional Amendment. Most Supreme Court Justices, when handling the case of Coleman v. Miller in 1939, felt: (1) that they had no right to handle the case because it involved a political question outside the jurisdiction of federal courts, (it has always been consistent in its position that the amending process is a "political question", not subject to "judicial interference"), (2) that as long as a proposed Amendment to the Constitution is pending - not having been ratified by three-fourths of all State Legislatures - a State Legislature can change its mind about ratifying or rejecting the proposal.

In conclusion, let me point out that this country has always set its women in high esteem. Wars have been fought, prairies and forrests tamed to provide for their wives and children. We don't want our women fighting our wars for us. As all of you men know who have lived in an all male environment, we don't want our women subjected to such conditions. Thank you.

Please notethe attached sheet showing that distinguished authorities oppose ERA.

Distinguished Authorities Oppose ERA

"When the Amendment was before Congress, I tried in every way I knew how to convince the Senate that this legislation should be amended to preserve protective legislation passed for the benefit of women; to require fathers to be responsible for family support; to exempt women from the draft and combat duty; and to preserve right-to-privacy laws and criminal laws for sex offenses. I deeply regret I was unsuccessful in my efforts and the Amendment passed the Senate unchanged.

"My view that the *ERA is the most destructive piece of legislation to ever pass Congress* still stands and I am hopeful that it will be defeated in the states."

Senator Sam J. Ervin, Jr.,
United States Senate

"I do not wish to see -- and to vote for -- a constitutional amendment which would require all women to be equally obligated with their husbands to support the family, even though millions of women may choose to do so. . . .

"I cannot in good conscience support a proposal to take away from all women the protections which reasonable men and women consider reasonable protection for women."

Congresswoman Leonor K. Sullivan,
United States House of Representatives

"Not only would women, including mothers, be subject to the draft but the military would be compelled to place them in combat units alongside of men. The same rigid interpretation could also require that work protective laws reasonably designed to protect the health and safety of women be invalidated; . . . in some cases it could relieve the fathers of the primary responsibility for the support of even infant children, as well as the support of the mothers of such children and cast doubt on the validity of the millions of support decrees presently in existence."

U.S. House Judiciary Committee Report,
No. 92-359, July 14, 1971

"In all the swirling arguments and differing interpretations of the language of the proposal, there has been very little thought given to the triple role most women play in life, namely, that of wife, mother and worker. This is a heavy role indeed, and to wipe away the sustaining laws which help tip the scales in favor of women is to do injustice to millions of women who have chosen to marry, to make a home, to bear children, and to engage in gainful employment as well. . . . I refuse to allow the glad-sounding ring of an easy slogan to victimize millions of women and children."

Congressman Emanuel Cellar,
United States House of Representatives

"That the proposed Equal Rights Amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty. . . . The Amendment expresses noble sentiments, but I'm afraid it will work much mischief in actual application. It will open a Pandora's box of legal complications."

Professor Paul Freund,
Harvard Law School

"The so-called Equal Rights Amendment . . . is largely misrepresented as a women's rights amendment when in fact the primary beneficiary will be men. I am opposed to its approval."

Professor Philip B. Kurland,
University of Chicago Law School

"Is the Equal Rights Amendment to be the Tonkin Gulf Resolution of the American social structure? . . . I would predict that the Equal Rights Amendment and many of the other goals of its proponents will bring social disruption, unhappiness and increasing rates of divorce and desertion."

Dr. Jonathan H. Pincus,
Professor of Neurology,
Yale Medical School

The Equal Rights Amendment "would minimize legal reinforcement of cultural mores supportive of family life, tend to degrade the homemaker role, and support economic development requiring women to seek careers. Plato's concept of common women and common children (public child care is implied by degrading the homemaker role) may not be far away. . . . It seems clear that a cultural revolution of proportions beyond the ken of the proponents of the Amendment is implied."

Professor Arthur E. Ryman, Jr.,
Drake University

"Only those who are ignorant of the nature of law and of its enforcement and regardless of the intricacies of American constitutional law, or indifferent to the exacting aspects of woman's industrial life, will have the naivete or the recklessness to sum up woman's whole position in a meaningless and mischievous phrase about 'Equal Rights'."

Justice Felix Frankfurter,
New Republic Magazine

"In the beginning of mining, there were women down in those mines and children. . . . We got the women and children out of the mines, you know. . . . I've been against the Equal Rights Amendment always . . . The core of activist support for the ERA comes from middle class white women, but passage of the ERA would endanger the hard won rights of working women -- both black and white."

Dr. Margaret Mead, Anthropologist,
Columbia University

"Use of the law in an attempt to conjure away all the differences which do exist between the sexes is both an insult to the law itself and a complete disregard of fact."

Professor Bernard K. Schwartz,
New York University Law School

"I call the Equal Rights Amendment the liftin' and totin' bill. More than half of the black women with jobs work in service occupations; if the Amendment becomes law, we will be the ones liftin' and totin', so passage of ERA is not our first priority."

Jean Noble, Executive Director,
National Council of Negro Women

February 5, 1975

PUBLIC HEARING - HCR 2009 (Effort to Rescind ERA)
Federal & State Affairs Committee

OPPONENTS	Minutes
Rep. David Heinemann -	5
Ms. Deanell Tacha, Professor (?) University of Kansas Law School	5
Ms. Carol McDowell, Women's Political Caucus	5 3:35
Rep. John Bower	2
Senator Jan Meyers	2
Ms. Cora Hobbel, ~~Communication Workers of Amer.~~ Private Citizen	2 3:41
Ms. Theresa Counts - Individual	2
Ms. Ruth Stout Wright, Amer. Assn. of University Women	2
Ms. Kala Stroup, Dean of Women, Univ. of Kansas	2 3:47
Ms. Che Mortimer - Housewife	2
~~Ms. Aileen Morris~~, League of Women Voters Marian Warriner	1
~~Ms. Darlene Stearns, Kansas Council of Churches~~ Irene French - Fed. of Rep. Women	1
~~Ms. Jane Roy - Individual~~	~~1~~
Ms. Lou Graumann - Individual	1
Ms. ~~Gay Shephard~~, Y.W.C.A. Othene Feeney	1
Ms. Judy Runnels, Kansas Nurses' Assn.	1
Ms. Jane Werholtz, Attorney-at-Law	1
	35 (need to cut to 30)

Mrs Annabelle Haupt - Wichita - Individual

Mr. Heinemann:

Introduce those who are not registered by name and organization

~~Ms. Annabelle Haupt, Wichita Women's Political Caucus~~

Ms. Edna Archer, Wichita Church Women United
Ms. Susan Crocketspoon, Wichita YWCA
Ms. Debra Mehl, Wichita AWARE
Ms. Clara Boyer, Wichita State Univ. Women's Studies
Mrs. Lucien Pyle, Kansas Council of Women

Ms. Jane Roy - Individual
Ms Delphine Smith - Wichita

BE REGISTERED if you speak for anyone other than yourself
(If you are not registered let one of coordinators know in advance)
COME FORWARD quickly following one ahead of you and introduce yourself.
Rep. Heinemann will introduce some who are present at end.

KEEP IT SHORT - We have only 30 minutes.

Rep. Ruth Wilkin
Hearing Coordinator

LADIES!

HAVE YOU HEARD?

DO YOU KNOW WHO IS PLANNING *YOUR* FUTURE FOR YOU? ARE YOU SURE THEY ARE PLANNING WHAT *YOU REALLY WANT?* IF NOT, IT'S TIME TO WAKE UP AND SPEAK UP! THE HOUR IS LATE!

ARE YOU SURE YOU WANT TO BE "LIBERATED"?

God created you and gave you a beautiful and exalted place to fill. No women in history have ever enjoyed such privileges, luxuries, and freedom as American women. Yet, a tiny minority of dissatisfied, highly vocal, militant women insist that you are being exploited as a "domestic drudge" and "a pretty toy." And they are determined to "liberate" you—whether you want it or not!

What is "liberation"? Ask women in Cuba. Castro "liberated" Cuba! Remember?

WHAT IS THE EQUAL RIGHTS AMENDMENT?

On March 22, 1972, the U. S. Congress passed the Equal Rights Amendment (ERA) and sent it to the states for ratification. If it is ratified by 38 states, it will become law, enforced by the federal government, superseding all state laws on related subjects.

The Amendment reads: "Equality of rights under the law shall not be denied or abridged by the United States or by any states on account of sex." Simple, isn't it? Deceptively simple. Sounds good, doesn't it? BUT HAVE YOU LOOKED AT THE HOOK INSIDE THE BAIT?

THE MOST DRASTIC MEASURE

Senator Sam Ervin called the ERA "the most drastic measure in Senate history." Why? Because it strikes at the very foundation of family life, and the *home is the foundation of our nation.* Can you possibly avoid being drastically affected by the ERA? NOT A CHANCE!

Actually, it is a Loss of Rights Amendment. How will it affect YOU?

DO YOU WANT TO LOSE YOUR RIGHT NOT TO WORK?

If you are married, you may choose to work outside your home. But you may choose to stay at home, to rear your children, to be supported by your husband. The ERA will abolish this right. It will invalidate all laws which require the husband to support his family and will make the wife equally responsible for support. You can be forced to supply half the family support, or all of it, if you are a better wage earner (pp. 944, 945, Yale Law Journal, which was inserted in the Congressional Record by Senator Birch Bayh, leading proponent of ERA).

What about your children? You can be forced to put them in a federal day care center, if one is available. And to see that one is available is a major goal of the National Organization for Women (NOW) —leaders in the movement to ratify the Equal Rights Amendment.

Under the ERA, if a wife fails to support her husband, he can use it as grounds for divorce (Yale Law Journal, p. 951).

This can work a special hardship on senior women who have spent their lives rearing their families and are not prepared to enter the job market.

WILL THE ERA HELP DIVORCED WOMEN?

Divorced women will lose the customary right of child custody, child support, and/or alimony, and can be forced to pay child support and alimony, if her husband wins custody of the children (Yale Law Journal, p. 952).

WHAT ABOUT OTHER EFFECTS ON FAMILY LIFE?

Wife and children will not be required to wear the name of husband and father. They can choose any name they wish. Can you imagine the resulting confusion?

According to leading law counsels, the ERA will permit homosexuals to "marry" and adopt children.

DO YOU WANT TO LOSE YOUR RIGHT TO PRIVACY?

The aim of NOW and other pro-ERA groups is to totally "desexigrate" everything. Professor Paul Freund, Harvard Law School, testified that ERA: "would require that there be no segregation of the sexes in prison, reform schools, public restrooms, and other public facilities."

This includes all public schools, college dormitories, and hospital rooms.

DO YOU WANT YOUR HUSBAND TO SLEEP IN BARRACKS WITH WOMEN?

If your husband is in the armed forces, or a fireman, what can you expect under ERA? It will be illegal to have separate facilities—so your husband will be sharing sleeping quarters, restrooms, showers, and/or foxholes with women.

DO YOU WANT TO LOSE YOUR RIGHT NOT TO BE DRAFTED?

Some women are crying for "equal rights" in the armed forces. But do you want them to abolish your right NOT to be drafted? ERA will do this. All women will register at age eighteen, subject to all military duties including combat.

If you have small children, "whichever parent was called first might be eligible for service; the remaining parent, male or female, would be deferred" (Yale Law Journal, p. 973). Do you want this for your daughters? Men, do you want your wives and daughters living in barracks with men? Going into combat with them?

DO YOU WANT PROTECTIVE LAWS AGAINST SEX CRIMES?

The ERA will abolish "seduction laws, statutory rape laws, laws prohibiting obscene language in the presence of women, prostitution and 'manifest danger' laws" and all laws against forcing women into prostitution (Yale Law Journal, pp. 954, 964).

WILL ERA PROVIDE BETTER PAY FOR WOMEN?

Not at all. Proponents of ERA incessantly sing the tune: "We want equal pay for equal work." They do not tell you that this is already guaranteed under:

(1) The Civil Rights Act of 1964, Subchapter VI: Equal Employment Opportunities (42 U.S. Code 2000e-2).

(2) The Equal Opportunities Act of 1972 (Public Law 92-261).

So the "equal pay for equal work" argument is deceptive—merely a smokescreen to hide the real intent of the ERA.

WILL THE ERA HELP WORKING WOMEN?

As noted above, it will NOT provide higher pay or increased job opportunities. It will NOT cause a husband to do more work around the house. It WILL, however, very adversely affect women in industry, by invalidating ALL PROTECTIVE LAWS FOR WOMEN —laws regulating weight lifting restrictions, rest periods, excessive working hours, and maternity leaves.

The ERA will do nothing for teachers. Their protection is already guaranteed by law. It WILL, however, adversely affect education by eliminating all single sex schools—military schools, seminaries, or women's colleges.

HOW WILL THE ERA AFFECT CHURCHES?

The National Organization for Women (NOW) is demanding that women "be ordained in religious bodies where that right is still denied." To refuse to do this will be illegal under ERA. One goal of NOW is to abolish the tax-exempt status of all churches.

If the Equal Rights Amendment is ratified, all Christian colleges which receive one dollar of federal money will no longer be permitted to have sexually segregated dormitories, showers, or restrooms.

A WOMAN'S UTOPIA?

At women's lib rallies, Russia is proudly cited as a country where women have equal rights. Harry Trimborn, staff writer, Los Angeles Times, visited Moscow and described just how "great" it is (L. A. Times, Dec. 23, 1970): "The women do the work and the men tell them how to do it. Like sweeping the streets, bricklaying, loading cargo ships, collecting garbage, building dams, digging ditches and mining coal . . . then she must spend at least 50% of her off-work time shopping and cooking. She can expect little help from her husband."

A Russian woman must put her baby in a state-operated child care unit. She (as well as men) can be jailed for refusing to engage in "socially useful labor" or for leading a "parasitic way of life."

This is a living picture of "liberation"!

CAN A STATE REVOKE ITS RATIFICATION OF ERA?

Absolutely! When 38 states ratify the ERA, it will become the 27th Amendment to the U. S. Constitution. At one time, 33 had ratified. Nebraska and Tennessee have rescinded their ratification.

"Clearly a state can change its mind either way before the amendment is officially declared to be ratified" (Prof. Charles L. Black, Jr., of Yale University Law School, Congressional Record, May 8, 1973, p. s8522).

WHAT CAN YOU DO ABOUT IT?

1. Find out where your state now stands on the Equal Rights Amendment.

2. Find out who your State Legislators are (you can call your local Democratic or Republican Headquarters.) Write them. Ask them to oppose ERA. Tell them that NOW does not speak for you, nor for most women. Ask your friends to write.

3. If possible, visit your representatives personally.

4. Work to inform as many people as possible (copies of this article available. 50 for $2.00; 100 for $3.50. Add .50 for postage.)

(NOTE: Proponents and opponents alike recognize the Yale Law Journal, Vol. 80, No. 5, April, 1971, herein used as documentation, to be an accurate analysis of the meaning and effects of the Equal Rights Amendment. Congresswoman Martha Griffiths, leading proponent, gave a copy to each member of Congress).

TOO LONG WE HAVE BEEN THE "SILENT MAJORITY." IT'S TIME TO SPEAK UP! LET YOUR VOICE BE STRONG AND CLEAR!

W. W. W. W.
WOMEN WHO WANT TO BE WOMEN
P. O. Box 12727
Fort Worth, Texas 76116

Notice that these quotes come from the Yale Law Journal which Margit Griffiths gave to congress & said, "It will help you understand the purposes & effects of the "Equal Rights Amendment".

How ERA Will Affect Social Security

Will the Equal Rights Amendment wipe out the right of wives to receive Social Security benefits? This is the great unanswered question that hangs over ratification of ERA as a constitutional amendment. The truthful answer is -- nobody can say for sure one way or the other, because it would be up to the U.S. Supreme Court *after* ERA is ratified and has already gone into effect. By then, it will be too late to reject ERA if we don't like the Supreme Court decision.

Few principles are so deeply ingrained into American law as the obligation of the husband to support his wife in an ongoing marriage. This obligation is basic to the marriage contract, and is recognized and fortified in an endless network of Federal and state statutes and in Federal and state case law.

One of the many manifestations of the husband's obligation is reflected in the Social Security system. A woman whose fulltime career has been as wife and mother -- who has never held any paid employment outside the home (or has been employed for only a few years) -- is nevertheless eligible to receive Social Security benefits *based on her husband's earnings*. This is one of the great preferential benefits that women receive under American laws. These preferential benefits recognize the dignity and worth of the woman who makes her career in the home.

For most of the years that Social Security has been in existence, women in paid jobs also had preferential treatment over men. Their benefits were figured on a different table from that of men -- a table that gave working women larger cash benefits than received by men who had put into the system the same amount of earnings. Also, women could retire three years earlier than men.

These higher Social Security benefits were sustained by the Federal courts. (*Gruenwald v. Gardner*, 390 F. 2d 591 (2d Cir.), cert. denied, 393 U.S. 982, 1968.) According to Professor Paul A. Freund of the Harvard Law School, "presumably the (Equal Rights) Amendment would require a different result." (*Harvard Civil Rights-Civil Liberties Law Review*, March 1971, page 238.) Unfortunately, in the last couple of years, these preferential benefits for working women have been phased out under the drive for a literal equality between the sexes.

But the great preferential treatment of wives still remains intact in Social Security. Wives now collect Social Security benefits based on their husband's earnings, and this "discrimination" in favor of wives is in turn based on the legally recognized obligation of the husband to support his wife.

We know positively that the Equal Rights Amendment will make unconstitutional all the state laws of the 50 states which impose on husbands the legal duty to support their wives. This has been fully documented in many previous issues of the *Phyllis Schlafly Report*. We have already seen this happen both by court decision and by statute amendment in Colorado, where a *state* ERA *already* requires a strict rule of sex equality.

Since ERA will wipe out all laws requiring a husband to support his wife while he is living, how can we expect to retain laws that require a husband to provide for his widow after he is dead? There can be no legal or logical basis for such a "discrimination." When we wipe out the principle of law that a husband must support his wife or widow in retirement, then there would be no right of a wife or widow to collect Social Security benefits *based on her husband's earnings*.

ERA proponents confidently claim, as Congresswoman Martha Griffiths has stated: "The Equal Rights Amendment would not permit men and women to be treated differently under Social Security." When men and women are treated the same under Social Security, logic compels us to conclude that wives who have not held paid jobs could no longer receive their preferential Social Security treatment.

When each person is treated equally, regardless of sex, women will be the clear losers. Most wives outlive their husbands, and anything that degrades the right of the wife to be provided for by her husband from his earnings is most painfully hurtful to the wife or widow at a time of life when she is most vulnerable.

If ERA is ever ratified, of course, there will be court cases. As Professor Paul Freund testified before the Judiciary Committee: "If anything about this proposed Amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court of the United States."

Who knows what the Supreme Court will do? The U.S. Supreme Court has rendered all sorts of unpredictable decisions in the areas of crime, education, busing, security risks, pornography, abortion, and states' rights. More and more, we are finding that the attitude of the courts is: "Lady, you asked for equality; now we'll give it to you."

Senator Sam Ervin, Jr., summed up the problem very well when he told the U.S. Senate on March 22, 1972: "I believe that the Supreme Court will reach the conclusion that the ERA annuls every existing Federal and state law making any distinction between men and women, however reasonable such distinction might be in particular cases, and forever rob the Congress and the legislatures of the 50 states of the constitutional power to enact any such laws at any time in the future."

Why take a chance on losing your Social Security benefits? By the time ERA gets to the U.S. Supreme Court, it will be too late to do anything. Ask your state legislators to reject ERA *now!*

The Phyllis Schlafly Report

Will The Real Jerry Ford Please Stand Up?

On August 22 President Gerald Ford invited reporters, photographers, and 16 women members of Congress to the White House to watch him sign a proclamation of Women's Equality Day and to hear him urge ratification of the Equal Rights Amendment. Undoubtedly this is the prelude to putting a political squeeze on State Legislators. They will be told to hurry up and ratify ERA because President Ford wants it.

Before this Presidential endorsement of the Equal Rights Amendment is taken at face value, State Legislators should realize that Gerald Ford's endorsement of the Equal Rights Amendment is a classic case of political double-dealing, of do-as-I-say-and-not-as-I-do, and of buckpassing. Here is the way the *New York Times* of August 23, 1974 (page 34) related President Ford's chameleon behavior:

"Mr. Ford not only voted for the Amendment in 1970, but also worked to bring it before the House for a vote, under an unusual procedure that required a majority of the members of the House to sign a petition asking that the Amendment be released from the Judiciary Committee, which had refused to approve it. Mr. Ford got from among his Republican colleagues 14 of the 15 final signatures that were needed to bring up the Amendment in the House.

"The Amendment passed the House in 1970, but was killed in the Senate.

"The following year, when a delegation of women asked Mr. Ford to support the Amendment again, he told them that he would be unable to vote for it because his constituents were upset over the fact that the Amendment, if enacted, would require women to be drafted into the armed services, if men were.

"He told the group, however, that he would work to get other Republican votes for the Amendment and that he would arrange to be absent when the vote was taken, rather than vote against the Amendment. That is what he did."

Any State Legislator who is asked to ratify ERA "because the President has endorsed it" should remember that he is asking you to take the rap from your angry constituents so that Ford can be on both sides of this issue. And for what? To appease a few militant females, he is willing to urge *other Legislators* to make American girls subject to the draft.

Jurisdiction Over Amendments

Quite apart from the external trappings of the Presidential endorsement of ERA, Gerald Ford was clearly out of order in presuming to tell State Legislators whether they should or should not ratify a constitutional amendment. The amending process is the only part of our entire governmental system in which the Executive Branch has *no* part. The Founding Fathers in their wisdom set up an amendment process under which a constitutional amendment travels directly from the U.S. Congress to the State Legislatures. The U.S. President has no part in the procedure. He cannot sign the amendment, and he cannot veto it. The same is true for the Governor of each of the States. To put it bluntly, a constitutional amendment is none of their business.

Every U.S. citizen is, of course, entitled to his opinion. But it is improper of the President or any Governor to use the funds, power, and prestige of his office to interfere in the amending process. With all the power that has moved from the legislative to the executive branch in recent years, legislators would be unwise to give up their last area of sole jurisdiction.

Yet, President Ford has just appointed a new woman to his White House staff who has announced that her principal objective will be to push for ratification of the ERA. This means that Federal salary and expense money will be spent to push ratification of ERA, which is essentially a grab for power at the Federal level and will result in a hoard of new Federal bureaucrats to implement it through "affirmative action" and "reverse discrimination."

The Phyllis Schlafly Report

Who Profits by "Liberation"?

Like other parasites capitalizing on the public crises industry, the legal profession has a large economic stake in the "liberation" of women. An ad in the *Atlanta Constitution* of February 12, 1974 announces "Divorce in 24 hours. Learn all about liberalized divorce laws in the Dominican Republic. . . . Fast, low-cost, discreet legal proceedings -- the same used by thousands of Americans already." Legalized abortion is likewise becoming a growth industry. Commercial billboards all around Atlanta urge: "Pregnant? For confidential help, call Georgia Family Planning Service." Here again it must be noted that no taxes are paid on illegal abortions. By making them legal, the state can perhaps collect enough additional taxes to support the abortion service, and maybe net enough "profit" to meet the "rising demand" for other public services.

Surely the biggest hoax in history lies in this latter shibboleth. For in fact the rising demand is not from people who would *consume* the services but from those who propose to *supply* them. In short, the alleged rising demand for public *services* is really a rising demand for public *spending*. Any relationship between the two is coincidental and is as likely to be negative (such as expenditures for the destruction of houses in order to make room for highways).

In fact, government's primary function has become that of providing a sheltered market place for suppliers of economic resources (including labor). With political forces being used to insulate suppliers from the discipline of consumer choice, there is an open conspiracy between political and economic powers. Rather than government by, of, and for the people, we have government against the people, as the myriad special private interests sponsor political candidates as hired mercenaries to exploit the common interest.

PROF. MACK A. MOORE, GEORGIA TECH

ERA Would Allow Homosexual Marriages

WASHINGTON — Opponents of the Equal Rights Amendment (ERA) have raised a serious new question about the impact that its ratification will have on the institution of marriage and future family life in the United States.

Led by Phyllis Schlafly, the attractive Alton, Ill., housewife, author, and national television commentator, the opposition group charges that the adoption of the constitutional amendment will clear the way for the legalization of "homosexual marriages" and grant them the special rights and benefits given by law to husband and wife.

One of the reasons for this alarming conclusion, according to Mrs. Schlafly, is the language of the Equal Rights Amendment, which says that "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

A second reason for the effect of ERA on homosexuality is the fact that it will require State legislatures (or the courts, if the legislatures fail to act) to delete the "sexist" language from State laws (e.g., man, woman, husband, wife, male, female) and replace all such words with sex-neutral language (e.g., person, spouse).

In effect, this means that a law that defines a marriage as a union of a man and a woman would have to be amended to replace those words with "person." A "marriage" between a "person" and a "person" is not the same thing at all as a marriage between a man and a woman.

To support the group's finding, Mrs. Schlafly cites the testimony of Prof. Paul Freund, of Harvard Law School, before the Senate Judiciary Committee. He stated:

"Indeed, if the law must be as undiscriminating concerning sex as it is toward race, it would follow that laws outlawing wedlock between members of the same sex would be as invalid as laws forbidding miscegenation. Whether the proponents of the amendment shrink from these implications is not clear."

Freund's testimony was supported by Prof. James White, of Michigan Law School, who reported:

"Conceivably a court would find that the State had to authorize marriage and recognize marital legal rights between members of the same sex."

THE SCHLAFLY REPORT

In a document titled "ERA and Homosexual 'Marriages'," now circulating among members of the anti-ERA group, Mrs. Schlafly also cites a study prepared by Professors Samuel T. Perkins and Arthur J. Silverstein and published in the Yale Law Journal.

Called "The Legality of Homosexual Marriage," this study shows clearly that the Equal Rights Amendment will authorize homosexual "marriages" because of ERA's stringent requirements and because under ERA "sex is to be an impermissible legal classification."

The Schlafly document also stresses that "a homosexual who wants to be a teacher could argue persuasively that to deny him a school job would be discrimination on account of sex." It also would permit homosexual couples to adopt children.

Members of the Schlafly group are now being urged to flood their State legislatures with copies of the new report as part of their national program to block the ratification of ERA. Approval by two-thirds of the Nation's fifty State legislatures is necessary for passage.

With approval of seven more State legislatures still needed to obtain the necessary two-thirds vote, supporters of the amendment are hoping that the recent endorsements of ERA by President Ford and his wife will help their campaign.

Opponents of ERA are convinced that the President's backing could backfire since members of State legislatures are getting more and more sensitive to the increased lobbying of Federal officials.

Once the full impact of ERA on the institution of marriage and the family become known, they contend, a number of State legislatures which already have approved the proposed constitutional amendment will repeal their action.

Note: At the national convention of National Organization for Women (NOW), the principal organization spearheading the push for ratification of the Equal Rights Amendment, gay-liberationist Ms. Sidney Abbott told reporters that "ten percent of the approximately 2,000 NOW members attending the convention are lesbians."

By Paul Scott THE WANDERER . October 10, 1974

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MONTHLY MAILINGS $3.00 PER YEAR

Prof. Paul Freund is a noted Constitutional Lawyer who has studied the E.R.A for over a period of 35 years.

Feb 5, 1975

Mr. Chairman, members of the Committee: I am Deanell Reece Tacha, an Associate Professor of Law at the University of Kansas Law School. I appreciate your invitation to appear before this Committee to express my views on the proposed legislation that would ~~repeal~~ rescind the ratification of the E.R.A. For the reasons I set out, I think that Kansas should not act to deratify the amendment, for I think the E.R.A. is a much needed addition to the United States Constitution.

I. THE PROBLEM OF DISCRIMINATION

No knowledgeable citizen could deny that sex discrimination in American law is both pervasive and pernicious. Irrational and harmful distinctions based solely on sexual differences continue to adversely affect the legal rights of both men and women. This discrimination fosters injustice, impedes the nation's economic progress, and causes personal unhappiness. Common sense and fairness require nothing less than action as effective as that taken when this nation prohibited discrimination on account of race, religion, or national origin in the Fourteenth Amendment more than 100 years ago. Indeed, the scope of the problem now under consideration can best be appreciated by recognizing that the primary goal of the Fourteenth Amendment was to provide equal rights under the law to less than 10% of the population while the E.R.A. is intended to guarantee equal rights to every citizen in the country--every man and woman.

IIL AVENUES OF REFORM

Once it is admitted that sex discrimination by law exists and should be eradicated, we must decide what methods of change within the legal system are most effective. Several approaches are possible and are not mutually exclusive.

A. Reform could take place through piecemeal repeal and revision of existing federal and state laws. Clearly, however, this should not be the exclusive means employed, since it would take the individual action of fifty states and the federal government working separately to alter the existing laws, and the task would not be completed in the lifetime of any woman now alive. There is certainly no legal impediment to such revision

now; but even with concerted effort, it would take many years and involve much deplication of effort. Statutes, such as the equal employment statutes are obviously welcome to E.R.A. supporters, go beyond the direct governmental ambit of the E.R.A. discrimination prohibition, but lack the permanence as well as the moral force of a federal constitutional prohibition. Equal employment statutes are being extensively violated occasioning much burdensome litigation. E.R.A. would provide more moral force to effect settlements, relieve some of the burden of litigation, and pursuade Courts to take a harder look for and at alleged statutory violations reaching litigation. After a time, E.R.A. precedents in analogous cases could further provide legal force and lessen the individual plaintiff's burden of persuasion as well as reduce, from a sociological view point, the number of cases required to eradicate or minimize the problem. I should add that under federal statutes such as the Equal Pay Act or Title VII, sex discrimination is not outlawed to the full extent of the interstate commerce power. Enterprises, though affecting interstate commerce, employing 14 workers or less are not covered under Title VII. Under the Equal Pay Act certain enterprises are not covered if there is a yearly gross of less than $250,000. Thus, even the legislative battle for statutory protection against sex discrimination in employment is not fully won. It is felt that E.R.A. would help provide the impetus for plugging the gaps federally or state by state. E.R.A. does have a second section which provides that Congress shall have the power to enforce E.R.A. by appropriate legislation, but probably the more likely and sound avenues would be the commerce clause or state action.

B. The Fourteenth Amendment could be enforced by adopting a stricter standard of what constitutes a denial of due process and equal protection. This alternative has been advanced by many who oppose the passage of the Equal Rights Amendment, and properly so; for if the Fourteenth Amendment had been vigorously enforced in the area of discrimination based on sex, there would be no need for the E.R.A. There has never been a time when the Supreme Court could not have granted equal rights to women by use of the Fourteenth Amendment, but the fact remains that the Court has failed to do so. The U.S. Supreme Court in recent cases like Reed and Frontiero has not yet held governmental sex discrimination a "suspect" violation of the equal protection clause of the 14th Amendment. Opportunity to declare

sex discrimination suspect existed in these two cases and a sufficient number of justices did not so conclude, though race discrimination, involving a minority and not a majority of Americans, has been declared suspect. Thus, a plaintiff challenging discriminatory state action under the equal protection clause has the burden to show (a) discrimination, plus (b) an unreasonable classification. E.R.A. would eliminate the second proof burden, which a "suspect" ruling would lessen, but not totally eliminate as a practical matter in my opinion. Representing a plaintiff, I would always be concerned with developing some evidence of unreasonable classification, even if the equal protection discrimination were suspect and the burden of proof were thus shifted to the defendant. While the Court has adopted a strict standard of review in cases involving fundamental rights and those involving certain types of discrimination, it has consistently refused to find that laws classifying on the basis of sex are inherently suspect. It is simply not enough to wait and hope that the Court will hear a landmark case, reverse its past decisions, and state a sufficiently broad rule. Furthermore, it is necessary for all branches of government to demonstrate an intention to eliminate the legal inequities in this area.

C. Finally, change in the law can be wrought through Constitutional Amendment. The basic premise of the Equal Rights Amendment is that sex should not be a factor in determining the legal rights of women or men. The advantage of the E.R.A. is that the political debate it has evoked and the lengthy Congressional hearings concerning it have created a climate in which the Supreme Court can interpret it positively and properly. The Congressional intent has been well expressed, and it is clear that Congress is merely trying to give guidance and Congressional Mandate to the Supreme Court's failure to proscribe legal distinction and discrimination based on sex. Forthcoming decisions of the Court may transform the E.R.A. into a constitutional redundancy; but this is not harmful, for particular acts and practices may simultaneously violate more than one constitutional provision.

III. LIMITATIONS ON THE AMENDMENT'S APPLICABILITY AND AREAS OF CONCERN

Those who prophesy that doom or absurdities will follow ratification of the Equal Rights Amendment do a disservice to reasoned discussion of the provision's scope. Some of the common misunderstandings of these persons can be dispelled with merely a glance at the legislative history.

A. Unique features. The fundamental legal principle underlying the E.R.A. is that the law must deal with the individual attributes of a particular person, not with a vast oversimplification based upon the irrelevant factor of sex. There is, however, one situation where the law may focus on a sexual characteristic and this basic principle has no applicability--in the relatively rare instance in which the legal system deals directly with a physical characteristic that is unique to one sex. Thus a law providing for payment of the medical costs of childbearing would cover only women, and a law relating to sperm banks would restrict only men. Such legislation cannot be said to deny equal rights to the other sex. There is no basis here for seeking or achieving equality. Such cases do not include instances in which the physical characteristic is not unique to one sex, or instances of real or assumed psychological or social differences between the sexes. Thus, laws establishing medical leave for childbearing would be permissible, since only women can bear children, but laws establishing leave for childrearing would have to apply to both sexes. One of the commonly expressed fears is that the E.R.A. will eliminate rape laws. This is simply not the case. The E.R.A. would simply require elimination of the sex distinctions in the rape laws and allow for the broader coverage of these laws to cover all forcible sex crimes regardless of the sex of the perpetrator or the victim. Unless, then, the difference is one that is characteristic of all women and no men, or all men, and no women, it is not the sex factor but the individual that should be determinative.

B. Privacy. The principle of Constitutional harmony dictates that the E.R.A. will be interpreted as part of the entire Constitution and that apparent conflicts, if any, will be harmonized by the courts. A source of conflict often mentioned by opponents of the amendment is the right of privacy, recognized as guaranteed by the constitution by the Supreme Court in Griswold v. Connecticut, 381 U.S. 479 (1965). Although the scope and implications of this right are still in the process of judicial development, the idea behind it is that there is an inner core of personal life that is protected against invasion by the laws of society, no matter how valid such laws and rules may be outside the protected sphere. Thus, the constitutional right of privacy would prevail over other portions of the constitution embodying the laws of society in its collective capacity. Generally, the privacy concept is applicable primarily in situations which involve disrobing,

sleeping, or performing personal bodily functions in the presence of the other sex. Further, it is clear that the framers of the amendment contemplated that the right of privacy would strictly limit the operation of the E.R.A. Thus, the right of privacy would permit, perhaps require, the separation of the sexes in public restrooms, and the segregation by sex of the sleeping quarters of public institutions. The E.R.A. is simply not a threat to our traditional notions of privacy and decency.

C. Governmental action. There is a further inherent limitation on the E.R.A. It proscribes only governmental action; that is, action taken by a state or federal government. While the concept of governmental action has been given fairly broad interpretation in the Fourteenth Amendment cases, it is not without bounds. With ratification of the E.R.A., the problems raised will be similar to those the courts have dealt with under the Fourteenth and Fifteenth Amendments. Conduct in the private, non-governmental sector will not be affected; and individual choice by private persons will be preserved. Thus, the status of women as homemakers would not be altered at all, nor would the private decisions as to whether a woman or a man in the typical family would be the breadwinner or the housekeeper.

There are other specific areas about which concern has been voiced by opponents of the amendment. Those concerns are readily seen to be ill-founded.

D. Labor laws. The first involves area so-called protective labor legislation. There are three interrelated points here. First, the crazy quilt of existing state protective laws reveals graphically that there is no consensus on what protection is needed for either men or women and that much of the legislation, far from providing solutions to the genuine problems of women workers, actually "protect" women out of jobs that they are perfectly capable of handling.

Second, under Title VII of the Civil Rights Act of 1964, much state legislation of this type is being invalidated and will be of no long term importance. Third, such laws as confer real benefits can and should be extended to men under the amendment. It is precisely for reasons such as this last that there is a two-year lag in the effect of the E.R.A. States will have ample time to revise such legislation and regulations. The state protective laws do not deal with the real problem for women--

exploitation by being underpaid and funneled into the lowest paying, most menial jobs in the society. Furthermore, the premise that real protection can be based on legislating by sex is fallacious.

Sex is an insufficient criterion to determine with accuracy who needs what protection. If, for example, some men and some women don't want to work overtime, laws should be passed forbidding employers to fire those who refuse overtime; but men and women who do want overtime pay should not be penalized. With respect to state labor legislation, there is ample precedent for the extension of certain benefits to men that are now available only to women rather than invalidating them altogether. In other areas the Supreme Court has been very scrupulous in extending benefits to a class of people unconstitutionally excluded from a benefit rather than voiding the law under which the class was improperly excluded. Moreover, the failure of any court to do this can be corrected through the legislative process. It should be pointed out that the E.R.A. does not in any way do away with the concept of"bona fide occupational qualifications" other than sex. If a particular job requires a certain physical characteristic or a specific background or experience, hiring on this basis is clearly legitimate and not affected by the E.R.A.

E. Military Service. One of the most emotionally-charged issues that arises with respect to the proposed amendment is compulsory military service for women. While the all-volunteer army renders the issue moot for the present, the E.R.A. should produce several changes if conscription is employed in the future. Of course, women already perform many necessary functions in the armed services, and an examination of the present military job categories reveals that at least half of the jobs performed in the military could be handled by women of no more than average endurance, strength, and ability. Jobs in electronics, crafts, services, and administration are just some of the many examples.

Since women are qualified to serve, there is no reason to deny them the many benefits available in the military, including economic independence, job training, educational benefits, medical care, and the upward mobility that has made the armed services attractive to many men. But men, too, would and should benefit, for fewer men would be drafted. Since women can perform many, indeed most, jobs now filled by men in the military, women should be subjected to the same call to duty as men. It would not be difficult to adapt present deferments and exemptions from military service

to a sexually neutral system. Congress will retain ample power to create legitimate exemptions, such as, for example, exemption of all parents of children under 18.

F. Family Law. Some persons have opposed the Equal Rights Amendment on the grounds that it would force great changes in the traditional family structure. They contend, for example, that a husband would be released from his obligation to support his family and that wives would be forced to take jobs and leave their children in child care centers. Such fears are baseless. The amendment will not require changes in the family structure for those who wish to continue traditional sex roles within marriage.

The common law imposes a duty on a husband to support his wife and children; however, this duty cannot be enforced through the courts unless the couple is separated. The E.R.A. would only more equitably divide the responsibility for support between the husband and the wife. Where a couple has divided responsibilities traditionally and then separates or divorces, the duty of support would still be imposed on the husband, since he would be more capable of earning a living, and the wife would have been and could remain occupied with the care of the children and the home. On the other hand, a wife's choice to work would impose a greater burden of support upon her. The division would not necessarily be a mathematically equal contribution from each spouse, but an equitable division based on a variety of criteria including current resources, earning power, education level, number of children, work experience, and other nonmonetary contributions to the family welfare.

It is worthy of emphasis that the trend of the law in this area is clearly in the direction proposed, even without the impetus of the E.R.A. The Kansas criminal nonsupport statute already comports with the requirements of the Amendment. With respect to family obligations in the event of a divorce, the National Conference of Commissioners on Uniform State Laws recently adopted a Uniform Marriage and Divorce Act which takes an approach similar to that contemplated by the amendment. It provides for alimony--called maintenance--to either spouse, and child support by either or both spouses, by defining all duties neutrally in terms of their sex. Similarly, the E.R.A. would make the fight to support dependent on economic need, not sex.

CONCLUSION

Some opponents of the E.R.A. are convinced that its adoption will introduce chaos, uncertainty, and confusion into our law and judicial processes. But these alarms and warnings are overplayed and stem primarily from a misconception of the judicial process and of the amendment itself. Opponents of the measure who stress this aspect of the amendment acknowledge by implication that widespread discrimination against women persists throughout our society and would be changed by the amendment.

The amendment will not provide a cure-all for the myriad problems of sex discrimination in law and society. The most important factor will continue to be the responsiveness of the judiciary to the demand for equality of treatment without regard to sex. As for the reexamination of state laws by state legislatures, it is not a weakness but a strength of the amendment that it will force prompt consideration of some charges that are long overdue. When constitutional amendments are in issue, it is not only the laws of the state of Kansas that must be considered, but the review of laws in all states. The amendment would underline this nation's commitment to the equality of all persons. Fifty years ago, a Senator named Charles Curtis, and a Representative named Daniel Anthony first proposed that this amendment be made a part of our constitution. Both of those legislators represented the State of Kansas. It would certainly be a shame for Kansas to draw back from their vision now.

To the Honorable G.T. Van Bebber and members of the Federal and State Affairs Committee:

I am Annabelle Haupt, 1006 Amidon, Wichita, Kansas. I am president of the Wichita Women's Political Caucus.

The National, Kansas, and Wichita Women's Political Caucuses strongly support the Equal Rights Amendment. These organizations have been proud that Kansas was the seventh state to ratify the Equal Rights Amendment on March 28, 1972.

The Kansas Legislature has been moving in the direction of correcting the language of statutes to include both men and women as equals. By this we are encouraged - - Thank you, and please keep up the good work.

As citizens of this nation, the members of the Women's Political Caucus want to be a part of those people who support equality of men and women for all the states of the Union.

The Equal Rights Amendment is needed to bring the same rights of equality to all women in all the states.

For these reasons, the Women's Political Caucus hopes that this committee will refuse to rescind the action taken on House Concurrent Resolution No. 1155.

Thank you.

A STATEMENT ON RESCISSION OF THE EQUAL RIGHTS AMENDMENT: MYTHS AND REALITY

February 5, 1975
Donna Fitzwater-President, Lawrence Women's Political Caucus

Sex discrimination has been an integral part of the laws, customs, and official practices of the United States. The Lawrence Women's Political Caucus believes that the Equal Rights Amendment will guarantee equal treatment for men and women under the law.

I urge all members of the House Federal and State Affairs Committee to recognize the "myths", surrounding the ERA, which have been so carefully constructed about its detrimental effects.

The members of the Lawrence Women's Political Caucus are quite proud of the fact that we are citizens of the state of Kansas. We are proud of our state's history and it's progressive attitude towards full citizenship for everyone.

We urge recognition of the fact that the ERA affects not just women's rights but all human rights. Henry Blackwell, in 1853, said, "I am the son of a woman and the brother of women. I know that this is their cause, but I feel it is mine also. Their happiness is my happiness, their misery, my misery. The interests of the sexes are inseparably connected."

Rescind the ERA? We urge you to consider the tragic error of the passage of House Concurrent Resolution 2009.

NEA-WICHITA • NEA-WICHITA • NEA-WICHITA • NEA-WICHITA

906 George Washington Drive
Wichita, Kansas 67211

PHONE 685-2397

President - JEANNE A. PONDS
Executive Director - WILLARD MOORE
Assistant Executive Director - TASH SOGG
Financial Secretary - MRS. MAXINE HILTON

NEA-WICHITA POSITION PAPER ON EQUAL RIGHTS AMENDMENT

1. NEA-Wichita firmly opposes reconsideration of the ratification of the Equal Rights Amendment by the Kansas Legislature.

2. The Kansas Legislature, after informative and sufficient debate, has dealt with this issue. There is no basis on which reconsideration can rest. We do not see during this time when our elected representatives are faced with many crucial matters, that any needs will be served by dealing again and again with the ERA.

3. We reaffirm our belief that every individual has the right to equal treatment under the law. The key word is "individual". To categorize skills and abilities by sex leads to restrictions in opportunities for both men and women. To provide or deny economic benefits to either sex is equally unfair.

4. Nothing in the ERA denies rights to any individual. It extends the American concepts of equality to men and women alike. The attempts to defeat it by interpreting it otherwise do a disservice to both.

5. We, the officers and members of the Executive Committee and Board of Directors of NEA-Wichita, speaking for more than 2000 educators, urge the Kansas Legislature to refuse reconsideration of ratification of the Equal Rights Amendment.

CITY OF TOPEKA

BILL McCORMICK, MAYOR

February 5, 1975

The Honoerable G. T. Van Bebber
House Federal and State Affairs Committee
State Capitol
Topeka, Kansas 66612

Dear Rep. Van Bebber:

At its regular meeting on February 4, 1975 the Board of Commissioners of the City of Topeka, Kansas expressed support for the Equal Rights Amendment and opposition to House Concurrent Resolution 2009 which seeks to rescind Kansas' ratification of the amendment.

The Commissioners are very much concerned with providing opportunities for all people, regardless of sex, to achieve their full potential in our society. Personally, I feel that amending the U. S. Constitution to include the Equal Rights Amendment is one step in the process of guaranteeing that all citizens will be permitted and encouraged to maximize their abilities.

If you or any member of the Committee would like to discuss this matter in greater detail, I would be happy to meet with you to do so. If you have any questions or comments, please feel free to contact me.

With every good wish.

Sincerely,

Bill McCormick

Bill McCormick,
Mayor

RESOLUTION NO. _____

WHEREAS the History of American women is replete with instances of discrimination on the basis of sex, and

WHEREAS women have been regarded as second class citizens as a result of sex discrimination, and

WHEREAS the Equal Rights Amendment to the Constitution of the United States eliminates discrimination based on sex and guarantees all citizens an equal place in American society, and

WHEREAS the legislature of the State of Kansas ratified the Equal Rights Amendment to the Constitution of the United States in March, 1972, and

WHEREAS House Concurrent Resolution 2009, which seeks to rescind the State of Kansas' ratification of the Equal Rights Amendment, has been introduced into the legislature

NOW THEREFORE BE IT RESOLVED that the Board of Commissioners of the City of Topeka opposes House Concurrent Resolution 2009 and reiterates its support of the Equal Rights Amendment.

Bill McCormick

Bill McCormick, Mayor

ATTEST:

_____

Norma E. Robbins, City Clerk

APPROVED AS TO FORM
BY LEGAL DEPARTMENT
Date 2/4/13
By _____

Exhibit 2-5-75

NATIONAL ASSOCIATION OF HUMAN RIGHTS WORKERS

527 WEST 39th STREET
KANSAS CITY, MISSOURI 64111
(816) 756-2360

February 4, 1975

The Honorable George T. Van Bebber, Chairman,
Honorable Members,
Federal and State Affairs Committee
House of Representatives, State of Kansas

The National Association of Human Rights Workers is a 27-year old association of professionals in the human rights field, devoting itself to the constant upgrading of the professionalism of its' members by education and training. Its' major publication, The Journal of Intergroup Relations, is used by 5,000 schools and libraries in the United States, Puerto Rico, Canada and England. Its' pages include articles and writings on every aspect of human rights and social thinking. It serves as a forum for scholars, as well as practitioners in the field, developing directions and thought often well in advance of what subsequently is accepted as the norm for our nation.

From our long history is derived a great deal of experience with the problems that result from restrictions and obstacles to equal access to opportunities because of traditional stereotyping. We do not, and have never been able to, understand the logic of limiting equality of opportunity to males only.

Among our members are women who have personally faced discrimination in education, employment, credit - indeed in every endeavor - with the result that much intelligence, talent and creativity is lost to our society.

I often point with pride to Kansas, noting it was among the first to ratify the Equal Rights Amendment, particularly when I meet with our members from those states which do not exhibit the conscience and forthright action of the Kansas Legislature.

To undo that action would be, in our collective and my personal opinion, a step backward that would say women are viewed as children, with less right to equality than other persons. I therefore urge you to vote against rescinding the Equal Rights Amendment.

Ruth G. Shechter

Ruth G. Shechter
President
5723 Windsor Drive
Fairway, Kansas 66205

PUBLICATIONS

THE JOURNAL OF INTERGROUP RELATIONS
J. Griffin Crump, Editor
50 West Hampton Drive
Indianapolis, Indiana 46208

NAHRW / NEWSLETTER
Guiou H. Taylor, Jr.
Urban League, Kansas City
916 Walnut Street
Kansas City, Missouri 64106

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BLANCA CEDENO
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New York, N.Y. 10007

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Human Relations Committee
419 City Hall
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THOMAS A. EBENDORF
Kentucky Commission on Human Rights
600 West Walnut Street
Louisville, Kentucky 40203

TESTIMONY AT HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

TOPEKA, KANSAS February 5, 1975

By: Helen T. Foresman (Mrs. LeRoy F.)
2825 North 56 Street
Kansas City, Kansas 66104

I am president of the Archdiocesan Council of Catholic Women, Kansas City in Kansas, a federation of the Catholic women's organizations in this Archdiocese which encompasses 21 counties of Northeast Kansas; representing approximately 30,000 concerned women for the rights of others.

Today as a representative of this Federation I wish to express our support for House Resolution No. 2009, rescinding Kansas's ratification of the Equal Rights Amendment.

For the 50 years we have been organized in Kansas, our members have supported issues and laws for the advancement and protection of each individual regardless of sex, race or creed, and with this dedication we are concerned for each ones welfare.

Believing God created each individual person equal and that we have a duty to take an equal responsibility in this world; believing that the family life structure as we know in our culture is most vital to our civilization, our concern among many other aspects of the Equal Rights Amendment is the drastic and insidious changes which will be wrought by this Amendment on the family life in these United States.

Paul A. Freund of the Harvard Law School speaking to the fact that laws concerning women would become a constitutional issue to be resolved by the Supreme Court of the United States said "The range of such potential litigation is too great to be readily foreseen, but it would certainly embrace such diverse legal provisions as those relating to widow's allowance, the obligation of family support and grounds for divorce, the age of majority and the right of annulment of marriages, and the maximum hours of labor for women in protected industries. Not only is the range of the amendment of indefinite extent, but even more important, the fate of all this varied legislation would be left highly uncertain in the face of judicial review. Presumably, the amendment would set up a constitutional yardstick of absolute equality between men and women in all legal relationships."

One area we might consider is: Social Security benefits. When we wipe out the law that the husband must support his wife, then she has no right to collect Social Security benefits on his earnings. Certainly, when each person is treated equally regardless of sex, women will be the clear losers.

In the some forty years Social Security has been inexistance we have seen changes, but it remains the fact women are protected - recognizing the dignity and worth of the woman who makes her career in the home.

In writing the Social Security Act, since we in the United States had never had such a plan, the authors looked to several foreign countries, Germany particularily, for study and consultation before writing this legislation. Today looking at another foreign country whose men and women enjoy equality -- freedom of equality; women, the freedom of equality that she must place her children in a day care center and work in the chosen - government chosen career; freedom of equality to chose the type work one engages in so long as it is the government's wishes;

freedom of equality that women engage in all types of labor which we in our culture consider in the realm a man's work. As the niece of one of the Social Security authors, it seems to me we have the example of equality of the sexes in that foreign country and I feel sure we do not wish to pattern our lives and laws after them.

A Professor of Neurology at the Yale Medical School, Dr. Jonathan Pincus, concerned about the amendment's removal of a husband's responsibility said, "It seems to me that the removal of legal responsibility from a man for supporting a family, giving the family a name and protecting his daughters from the sort of influences the U. S. Army might have in store for them before marriage is likely to have some effect on the manner in which men relate to their wives and children and vice versa; those traditional ties will be weakened."

We feel a solid happy family life is the foundation of mental health and happiness and see the Equal Rights Amendment bringing social disruption, unhappiness and increasing rates of divorce and desertion. Weakening of family ties also leads to increased rates of alcoholism, suicide and sexual deviation.

At the present time we all are concerned about these problems which exist in our society and I do not believe we wish to release a Pandora's box which would further nurture these.

When God created men and women, He made physiological and functional differences between them. These differences confer upon men a greater capacity to perform arduous and hazardous physical tasks. This does not imply that either sex is superior to the other. It simply states the all important truth that men and women complement each other in the relationships and undertakings on which the existence and development of the race depend.

The former Senator from North Carolina, Sam J. Ervin, Jr stated, "From time whereof the memory of mankind runneth not to the contrary, custom and law have imposed upon men the primary responsibility for providing a habitation and a livelihood for their wives and children to enable their wives to make the habitations homes, and to furnish nurture, care and training to their children during their early years.

"In this respect, custom and law reflect the wisdom embodies in the ancient proverb that God could not be everywhere, so he made mothers. The physiological and functional differences between men and women constitute the most important reality. Without them human life could not exist. For this reason, any country which ignores these differences when it fashions its institutions and makes its laws is woefully lacking in rationality. Our country has not thus far committed this grievous error."

Time does not allow a review of many of the ramifications and inherent dangers to men's and women's rights in the Equal Rights Amendment. We would request you give serious consideration to the task at hand and would request you to adopt House Resolution 2009.

Thank you.

STATEMENT BY THE COMMISSION ON THE STATUS OF WOMEN,
KANSAS STATE UNIVERSITY

TO: G. T. VanBebber, Chairman, Federal and State Affairs Committee,
Kansas House of Representatives

Subject: House Concurrent Resolution No. 20009

The Kansas State University Commission on the Status of Women wishes to go on record as opposing any and all efforts by the Legislature of the State of Kansas to recind its previous ratification of the Equal Rights Amendment.

We believe that ratification of the ERA by the State Legislature in 1972 was in the best interests of all the citizens of the State. While there has been some progress toward the goal of equal rights and responsibilities for men and women in recent years, there is overwhelming evidence that patterns of sex discrimination continue to permeate our social, cultural, and economic life. The case-by-case attack on laws and regulations has not succeeded in eradicating sex discrimination by federal, state and local governments. Only a Constitutional Amendment can provide the legal, moral, and symbolic guarantee necessary to change our laws.

February 5, 1975

Dorothy Thompson
Ex Officio Chairperson

February 5,1975

Honorable G.T. VanBebber and Members of the Federal and State Affairs Committee:

I am Edna M. Archer of 2135 Payne, Wichita ,Kansas. I represent the Church Women United of Wichita. The National Church Women United and My local Wichita Church Women United have endorsed equality between men and women. I come to ask in their behalf that House Concurrent Resolution No.2009 not be reported favorable for we support the Equal Rights Amendment.

I am a retired teacher and have been through this equality right needs being a widow early in life with two small boys to support and educate. Our prayers are that each of you will see the needs to not let this Resolution be presented on the floor.

Edna Archer

2-5-75
exhibit

EQUAL RIGHTS AMENDMENT

Excerpts from the Minority Views of
Senator Sam J. Ervin, Jr. (North Carolina)

To abolish unreasonable and unfair discriminations against women is a worthy goal. No one believes more strongly than I that discriminations which society makes against women in certain areas of life ought to be abolished and they ought to be abolished by law in every case where they are created by law.

To stop discriminations against women we are considering Constitutional amendments which would abolish all legal distinctions between men and women. Therefore, the question to be resolved by the Senate is that: Should all laws which treat men and women differently be abolished and should the Federal government and the State legislatures be forbidden by the Constitution to pass any such legislation in the future?

Before we abolish all legal differences in the treatment of men and women to reach the admittedly unfair discriminations which do exist against women, I believe that we should consider the following questions:

1. What is the character of the unfair discriminations which society makes against women?

2. Does it require an amendment to the Constitution of the United States to invalidate them?

3. If so, would the Equal Rights Amendment constitute an effective means to that end? In other words, would the ERA reach areas in which the Congress does not really want to act?

It is the better part of wisdom to recognize that discriminations not created by law cannot be abolished by law. They must be abolished by changed attitudes in the society which imposes them.

One of the recurring myths that surround the equal rights for women amendment is the allegation that all women are for the amendment. This is not so. . . .

HOW WOULD THE ERA BE INTERPRETED

If the Equal Rights for Women amendment is approved, I believe that the Supreme Court will reach the conclusion that the ERA annuls every existing Federal and state law making any distinction between men and women however reasonable such distinction might be in particular cases, and forever robs the Congress and the legislatures of the fifty states of the Constitutional power to enact any such laws at any time in the future. I am not alone in entertaining this fear.

When the so called Equal Rights Amendment was under consideration in 1953, Roscoe Pound of the Harvard Law School and other outstanding scholars joined one of America's greatest legal scholars, Paul A. Freund of the Harvard Law School, in a statement opposing the Equal Rights Amendment upon the ground that they feared that this devastating interpretation might be placed upon it if it should be adopted. This statement made these indisputable observations:

"If anything about this proposed amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court of the United States. Every statutory and common law provision dealing with the manifold relation of women in society would be forced to run the gauntlet of attack on constitutional grounds. The range of such potential litigation is too great to be readily forseen, but it would certainly embrace such diverse legal provisions as those relating to a widow's allowance, the obligation of family support and grounds for divorce, the age of majority and the right of annulment of marriages, and the maximum hours of labor for women in protected industries.

"Not only is the range of the amendment of indefinite extent, but, even more important, the fate of all this varied legislation would be left highly uncertain in the face of judicial review. Presumably, the amendment would set up a constitutional yardstick of absolute equality between men and women in all legal relationships. A more flexible view, permitting reasonable differentiation, can hardly be regarded as the object of the proposal, since the Fourteenth Amendment has long provided that no state shall deny to any person the equal protection of the laws, and that Amendment permits reasonable classifications while prohibiting arbitrary legal discrimination. If it were intended to give the courts the authority to pass upon the propriety of distinctions, benefits and duties as between men and women, no new guidance is given to the courts, and this entire subject, one of unusual complexity would be left to the unpredictable judgments of courts in the form of constitution decisions.

"Such decisions could not be changed by act of the legislature. Such a responsibility upon the courts would be doubtless as unwelcome to them as it would be inappropriate. As has been stated, however, the proposal evidently contemplates no flexibility in construction but rather a rule of rigid equality. This branch of the dilemma is as repelling as the other."

After analyzing in some detail the laws whose validity might be jeopardized by the Equal Rights Amendment, the statement concluded with these observations:

"The basic fallacy in the proposed amendment is that it attempts to deal with complicated and highly concrete problems arising out of a diversity on human relationships in terms of a single and simple abstraction. This abstraction is undoubtedly a worthy ideal for mobilizing legislative forces in order to remedy particular deficiencies in the law. But as a constitutional standard, it is hopelessly inept. That the proposed equal rights amendment open up an era of regretable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty." . . .

SPECIFIC AREAS AFFECTED BY THE EQUAL RIGHTS AMENDMENT

Time and space preclude me from an attempt to picture in detail the constitutional and legal chaos which would prevail in our country if the Supreme Court should feel itself compelled

to place upon the Equal Rights Amendment the devastating interpretation feared by these legal scholars.

For this reason, I must content myself with merely suggesting some of the terrifying consequences of such an interpretation.

While the amendment would affect all areas of our society, I will mention only a few of the specific areas including: the military, the criminal law, privacy, domestic relations, and protective labor legislation.

MILITARY

The impact of the ERA on the military will be *massive.*

The Congress and the legislatures of the various states have enacted certain laws based upon the conviction that the physiological and functional differences between men and women make it advisable to exempt or exclude women from certain arduous and hazardous activities in order to protect their health and safety.

Among Federal laws of this nature are the Selective Service Act, which confines compulsory military service to men; the acts of Congress governing the voluntary enlistments in the armed forces of the nation which restrict the right to enlist for combat service to men; and the acts establishing and governing the various service academies which provide for the admission and training of men only. There is no question that these laws will be abolished. As Professor Paul Freund of the Harvard Law School said, "And so women must be admitted to West Point on a parity with men; women must be conscripted for military service equally with men . . ." Professor Phil Kurland of the Chicago Law School agrees.

The position of the Justice Department and the Defense Department is that women will be subject to the draft. In a letter to Senator Bayh dated February 24, 1972, the General Counsel for the Defense Department, J. Fred Buzhardt, dealt with some of the problems which would be caused by the ERA in the military. Mr. Buzhardt said:

"Further, there is the possibility that assigning men and women together in the field in direct combat roles might adversely affect the efficiency and discipline of our forces.

"On the other hand, if women were not assigned to duty in the field, overseas, or on board ships, but were entering the armed forces in large numbers, this might result in a disproportionate number of men serving more time in the field and on board ship because of a reduced number of positions available for their reassignment.

"If this amendment allowed no discrimination on the basis of sex even for the sake of privacy, we believe that the resulting sharing of facilities and living quarters would be contrary to prevailing American standards.

"Even if segregation of living quarters and facilities were allowed under the amendment, during combat duty in the field there are often, in effect, no facilities at all, and privacy for both sexes might be impossible to provide or enforce." . . .

A very complete analysis of the ERA's effect on the military was compiled in the *Yale Law Journal* in April 1971. The significance of this article that Congresswoman Griffiths has said that the article ". . . will help you understand the purposes and effects of the Equal Rights Amendment" and Senator Bayh has called it a "masterly piece of scholarship." Thus, the supporters of the amendment feel that it will have the following effect on the military and I agree with them. No clearer or more unique history of legislative intent can be presented of the amendment and the military because both the opponents and proponents agree on the amendment's effect in this area.

Significant excerpts from the *Yale Law Journal* which supported by the amendment's proponents are as follows:

1. "The Equal Rights Amendment will have a substantial and pervasive impact upon military practices and institutions. As now formulated, the Amendment permits no exceptions for the military."

2. "Women will serve in all kinds of units, and *they will be eligible for combat duty.* The double standard for treatment of sexual activity of men and women will be prohibited."

3. "Neither the right to privacy nor any unique physical characteristic justifies different treatment of the sexes with respect to voluntary or involuntary service, and pregnancy justifies only slightly different conditions of service for women."

4. "Such obvious differential treatment for women as exemption from the draft, exclusion from the service academies, and more restrictive standards for enlistment will have to be brought into conformity with the Amendment's basic prohibition of sex discrimination."

5 "These changes will require a *radical* restructuring of the military's views of women."

6. "The Equal Rights Amendment will greatly hasten this process and will require the military to see women as it sees men."

7. "A woman will register for the draft at the age of eighteen, as a man now does."

8. "Under the Equal Rights amendment, all standar applied through (intelligence tests and physical examinations) will have to be neutral as between the sexes."

9. "The military will clearly have sufficient time during the period after ratification to make the minor adaptations, such as the expansion of gynecological services, necessary to comply with the statute."

10. "First, height standards will have to be revised from the dual system which now exists."

11. "The height-weight correlations for the sexes will also have to be modified."

12. Deferment policy "could provide that one, but not both, of the parents would be deferred. For example, whichever parent was called first might be eligible for service; the remaining parent, male or female would be deferred."

13. "If the rules continue to require discharge of women with dependent children, then men in a similar situation will also have to be discharged . . . The nondiscriminatory alternative is to allow both men and women with children to remain in the service and to take their dependents on assignments in noncombat zones, as men are now permitted to do."

14. "Distinctions between single and married women who become pregnant will be permissible only if the same distinction is drawn between single and married men who father children."

15. "Thus, if unmarried women are discharged for pregnancy, men shown to be fathers of children born out of wed-

lock would also be discharged. Even in this form such a rule would be suspect under the Amendment, because it would probably be enforced more frequently against women. A court will therefore be likely to strike down the rule despite the neutrality in its terms, because of its differential impact."

16. "Under the Equal Rights Amendment the WAC would be abolished."

17. "Women are physically as able as men to perform many jobs classified as combat duty, such as piloting an airplane or engaging in naval operations . . . there is no reason to prevent women from doing these jobs in combat zones."

18. "No one would suggest that . . . women who serve can avoid the possibility of physical harm and assault. But it is important to remember that all combat is dangerous, degrading and dehumanizing."

19. "Male officers are provided a dependents' allowance based on their grade and the number of dependents . . ." The Equal Rights amendment will recognize "the husband of a female officer . . . as a dependent."

20. "Athletic facilities will also have to be made available to women personnel."

CRIMINAL LAW

Because of different physical characteristics, and health considerations, and other reasons, legislatures have adopted some criminal laws which apply to only one sex or the other or treat men and women differently in some degree. Because the Equal Rights Amendment will forbid any legal distinctions between men and women, all existing and future criminal laws of this nature would be nullified.

As in several areas, a good review of the types of laws that will be changed by the ERA was discussed in the April 1971 issue of the *Yale Law Journal*. This article has been cited with approval by the proponents of the ERA and the statements which I have excerpted should constitute a good example of what we could expect after passage of the act in the area of criminal law. The excerpts from the *Yale Law Journal* are as follows:

1. "Courts faced with criminal laws which do not apply equally to men and women would be likely to invalidate the laws rather than extending or rewriting them to apply to women and men alike."

2. "Courts will most likely invalidate sodomy or adultery laws that contain sex discriminatory provisions, instead of solving the constitutional problems by extending them to cover men and women alike."

3. "Seduction laws, statutory rape laws, laws prohibiting obscene language in the presence of women, prostitution and 'manifest danger' laws . . . Equal Rights Amendment would not permit such laws, which base their sex discriminatory classification on social sterotypes."

4. "The statutory rape laws, which punish men for having sexual intercourse with any woman under an age specified by law . . . suffer from a double defect under the Equal Rights Amendment."

5. "To be sure, the singling out of women probably reflects sociological reality . . . Likewise, in this society, the bad reputation and illegitimate child which can result from an improvident sexual liaison may be far more ruinous to a young woman's psychological health than similar conduct is to a young mans. *But the Equal Rights Amendment forbids finding legislative justification in the sexual double standard . . .*"

6. "Adultery laws also contain sex discriminatory provisions which would be impermissible under the Equal Rights Amendment."

7. "Courts may be expected to hold that laws which confine liability for prostitution to women only are invalid under the Equal Rights Amendment."

8. "Just as the Equal Rights Amendment would invalidate prostitution laws which apply to women only, so the ERA would require invalidation of laws specially designed to protect women from being forced into prostitution."

9. "A court would probably resolve doubts about congressional intent by striking down the . . . (Federal White Slave Traffic–Mann Act)."

DOMESTIC RELATIONS LAWS

The common law and statutory law of the various states recognize the reality that many women are homemakers and mothers, and by reason of the duties imposed upon them in these capacities, are largely precluded from pursuing gainful occupations or making any provision for their financial security during their declining years. to enable women to do these things and thereby make the existence and development of the race possible, these state laws impose upon husbands the primary responsibility to provide homes and livelihoods for their wives and children, and make them criminally responsible to society and civilly responsible to their wives if they fail to perform this primary responsibility. Moreover, these state laws secure to wives dower and other rights in the property left by their husbands in the event their husbands predecease them in order that they may have some means of support in their declining years.

If the Equal Rights Amendment should be interpreted by the Supreme Court to forbid any legal distinctions between men and women, it would nullify all existing and all future laws of this kind.

As with the military, a good analysis of what the amendment will accomplish in the area of domestic relations was set out in the *Yale Law Journal* which has been fully endorsed by Congresswoman Martha Griffiths and other proponents of the ERA. As I have stated earlier, no clearer legislative intent can be presented because I agree with the amendment's proponents that the ERA will have the following effects.

Significant excerpts from the *Yale Law Journal* which is supported by the proponents of the ERA in the area of domestic relations are as follows:

1. "The Equal Rights Amendment, continuing this trend, would prohibit dictating different roles for men and women within the family on the basis of their sex."

2. "Thus, common law and statutory rules requiring name change for the married women would become legal nullities."

3. "These states could conform to the Equal Rights Amendment by requiring couples to pick the same last name, but allowing selection of the name of either spouse, or of a third name satisfactory to both."

4. "The Amendment would also prohibit the states from requiring that a child's last name be the same as his or her father's, or from requiring that a child's last name be the same as his or her mother's."

5. "In ninety percent of custody cases the mother is awarded the custody. The Equal Rights Amendment would prohibit both statutory and common law presumptions about which parent was the proper guardian based on the sex of the parent."

6. "Physical capacity to bear children can no longer justify a different statutory marriage age for men and women."

7. "Mere estimates of emotional preparedness founded on impressions about the 'normal' adolescent boy and girl are based on the kind of averaging which the Equal Rights Amendment forbids."

8. "The Equal Rights Amendment would not permit a legal requirement, or even a legal presumption, that a woman takes her husband's name at the time of marriage."

9. "A court would do away with the rule that refusal to accompany or follow a husband to a new domicile amounts to desertion or abandonment."

10. "A husband would no longer have grounds for divorce in a wife's unjustifiable refusal to follow him to a new home."

11. "The traditional rule is that the domicile of legitimate children is the same as their father's . . . The Equal Rights Amendment would not permit this result."

12. "In all states husbands are primarily liable for the support of their wives and children . . . the child support sections of the criminal nonsupport laws . . . could not be sustained where only the male is liable for support."

13. "The Equal Rights Amendement would bar a state from imposing greater liability for support on a husabnd than on a wife merely because of his sex."

14. "Two different systems have been adopted in the United States for distributing property rights within a family—the community property system and the common law system . . . As both systems currently operate, they contain sex discriminatory aspects which would be changed under the Equal Rights Amendment."

15. "Under the Equal Rights Amendment, laws which . . . favor the husband as manager (of community property) in any way, would not be valid."

16. "All states except North Dakota and South Dakota give women a nonbarrable share in her husband's estate, but a number of states fail to give the husband a corresponding legal claim in his wife's estate . . . the discriminatory laws would either be invalidated or extended."

17. "A court could invalidate (many grounds for divorce) without doing any serious harm to the overall structure of the states' divorce laws . . . These are pregnancy by a man other than husband at time of marriage, nonsupport, alcoholism of husband, wife's unchaste behavior, husband's vagrancy, wife's refusal to move with husband without reasonable cause, wife a prostitute before marriage, indignities by husband to wife's person, and willful neglect by husband."

18. "Like the duty of support during marriage and the obligation to pay alimony in the case of separation or divorce, nonsupport would have to be eliminated as a ground for divorce against husbands only . . ."

19. "The laws that grant a husband a divorce because at the time of marriage he did not know his wife was pregnant by another man would be subject to strict scrutiny under the unique physical characteristics tests."

20. "The Equal Rights Amendment would not require that alimony be abolished but only that it be available equally to husbands and wives."

21. "The laws could provide support payments for a parent with custody of a young child who stays at home to care for that child so long as there was no legal presumption that the parent granted custody should be the mother."

22. The ERA could require "for maintenance to be paid from one spouse to the other if the spouse seeking maintenance lacks sufficient property to provide for *his* reasonable needs and is unable to support *himself* through appropriate employment." . . .

RIGHT TO PRIVACY

I believe that the absolute nature of the Equal Rights Amendement will, without a doubt, cause all laws and state-sanctioned practices which in any way differentiate between men and women to be held unconstitutional. Thus, all laws which separate men and women, such as separate schools, restrooms, dormitories, prisons, and others will be stricken. Also, men and women will be thrown together with no separation on the grounds of sex in the military.

The proponents of the ERA mention that the Constitutional right to privacy will protect and keep separate items such as public restrooms; however, this assertion overlooks the basic fact of constitutional law construction: The most recent constitutional amendment takes precedence over all other sections of the Constitution with which it is inconsistent. Thus, if the ERA is to be construed absolutely, as its proponents say, then there can be no exception for elements of publically imposed sexual segregation on the basis of privacy between men and women.

Even assuming the *very unlikely* result that privacy will allow segregation of the sexes in places like the military, Fred Buzhardt, General Counsel of the Defense Department, mentioned the physical impossibility of providing this always in the military. Mr. Buzhardt said:

"Even if segregation of living quarters and facilities were allowed under the amendment, during combat duty in the field there are often, in effect, no facilities at all, and privacy for both sexes might be impossible to provide or enforce."

Professor Paul Freund of the Harvard Law School testified about this matter before the Senate Judiciary Committee in 1970. After stating that the amendment would be absolute, Professor Freund said that it would follow that the ERA "would require that there be no segregation of the sexes in prison, reform schools, public restrooms, and other public facilities."

Professor Phil Kurland, Editor of the *Supreme Court Review* and a Professor of Law at the University of Chicago Law School stated before the Judiciary Committee:

Senator Ervin. The law which exists in North Carolina and in virtually every other state of the Union which requires separate restrooms for boys and girls in public schools would be nullified, would it not?

Professor Kurland. That is right, unless the separate but equal doctrine is revived.

Senator Ervin. And the laws of the states and the regulations of the Federal government which require separate rest-

rooms for men and women in public buildings would also be nullified, would it not?

Professor Kurland. My answer would be the same.

As Professors Freund and Kurland indicate there is no qualification of the ERA for the privacy of women just as there will be none for the draft or protective labor laws.

A few examples in our society where the privacy aspect of the relationship between men and women would be changed are:

1. Police practices by which a search involving the removal of clothing will be able to be performed by members of either sex without regard to the sex of the one to be searched.

2. Segregation by sex in sleeping quarters of prisons or similar public institutions would be outlawed.

3. Segregation by sex of living conditions in the armed forces would be outlawed. This includes close quarter living in combat zones and foxholes.

4. Segregation by sex in hospitals would be outlawed.

5. Physical exams in the armed forces will have to be carried out on a sex neutral basis.

There are, of course, numerous other examples which flow from the absolute nature of the Equal Rights for Women amendment.

THE RADICAL EFFECT OF THE EQUAL RIGHTS AMENDMENT ON THE AMERICAN SOCIAL STRUCTURE

. . . Professor of Neurology at the Yale Medical School, Dr. Jonathan H. Pincus, has asked the following question: "Is the Equal Rights Amendment to be the Tonkin Gulf Resolution of the American social structure?" In a statement in opposition to the ERA, Dr. Pincus goes on to answer his question in the affirmative, and in his discussion he sheds some real light on the radical changes which will be made in our social structure.

At the present time in all states husbands are primarily liable for the support of their wives and children but, as Representative Griffiths' approved article in the *Yale Law Journal* states, "The ERA would bar a state from imposing greater liability for support on a husband than on a wife merely because of his sex." Dr. Pincus is very concerned about the effects of this removal of a husband's responsibility. Dr. Pincus said:

"It seems to me that the removal of legal responsibility from a man for supporting a family, giving the family a name and protecting his daughters from the sort of influences the U.S. Army might have in store for them before marriage is likely to have some effect on the manner in which men relate to their wives and children and vice versa; those traditional ties will be weakened."

Dr. Pincus feels that "a solid happy family life is the foundation of mental health and happiness," and as to the effects of the ERA on this family life, he goes on to state:

"I would predict that the Equal Rights amendment and many of the other goals of its proponents will bring social disruption, unhappiness and increasing rates of divorce and desertion. Weakening of family ties may also lead to increased rates of alcoholism, suicide and, possibly, sexual deviation."

Whether or not one agrees with the predictions of Dr. Pincus, I believe he is asking very genuine questions which should be discussed before the Constitution is amended. Before we begin tinkering with the very subtle mechanisms of family relationships and social responsibilities, should we not consider that we might in fact be passing a Tonkin Gulf Resolution of the American social structure?

While I believe that any unfair discriminations which the law has created against women should be abolished by law, I have the abiding conviction that the law should make such distinctions between them as are reasonably necessary for the protection of women and the existence and development of the race.

I share completely this recent observation by Mr. Bernard Swartz: "Use of the law in an attempt to conjure away all the differences which do exist between the sexes is both an insult to the law itself and a complete disregard of fact."

The late Justice Felix Frankfurter, in an eloquent statement in the *New Republic* magazine many years ago put it a different way. Justice Frankfurter said:

"Only those who are ignorant of the nature of law and of its enforcement and regardless of the intricacies of American constitutional law, or indifferent to the exacting aspects of woman's industrial life, will have the naivete or the recklessness to sum up woman's whole position in a meaningless and mischievous phrase about 'equal rights'."

Let us consider for a moment whether there be a rational basis for reasonable distinctions between men and women in any of the relationships or undertakings of life.

When He created them, God made physiological and functional differences between men and women. These differences confer upon men a greater capacity to perform arduous and hazardous physical tasks. Some wise people even profess the belief that there may be psychological differences between men and women.

To say these things is not to imply that either sex is superior to the other. It is simply to state the all important truth that men and women complement each other in the relationships and undertakings on which the existence and development of the race depend.

The physiological and functional differences between men and women empower men to beget and women to bear children, who enter life in a state of utter helplessness and ignorance, and who must receive nurture, care, and training at the hands of adults throughout their early years if they and the race are to survive, and if they are to grow mentally and spiritually. From time whereof the memory of mankind runneth not to the contrary, custom and law have imposed upon men the primary responsibility for providing a habitation and a livelihood for their wives and children to enable their wives to make the habitations homes, and to furnish nurture, care, and training to their children during their early years.

In this respect, custom and law reflect the wisdom embodied in the ancient proverb that God could not be everywhere, so he made mothers. The physiological and functional differences between men and women constitute the most important reality. Without them human life could not exist.

For this reason, any country which ignores these differences when it fashions its institutions and make its laws is woefully lacking in rationality.

Our country has not thus far committed this grievous error. As a consequence, it has established by law the institutions of

marriage, the home, and the family, and has adopted some laws making some rational distinctions between the respective rights and responsibilities of men and women to make these institutions contribute to the existence and advancement of the race.

It may be that times are changing and more and more women will leave the home to compete in the business and professional community. However, I would like to call the Senate's attention to the remarks of Professor Phil Kurland of the University of Chicago Law School on this point. He said:

"Times have changed in such a way that it may well be possible for the generation of women now coming to maturity, who had all the opportunities for education afforded to their male peers and who had an expectation of opportunities to put education to the same use as their male peers, to succeed in a competitive society in which all differences in legal rights between men and women were wiped out. There remains a very large part of the female population on whom the imposition of such a constitutional standard would be disastrous. There is no doubt that society permitted these women to come to maturity not as competitors with males but rather as the bearers and raisers of their children and the keepers of their homes. There are a multitude of women who still find fulfillment in this role. In the eyes of some, this may be unfortunate, but it is true. It can boast no label of equality now to treat the older generations as if they were their own children or grandchildren. Certainly the desire to open opportunities to some need not be bought at the price of removal of legal protections from others." . . .

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5¢ a copy

NATIONAL DEFENSE COMMITTEE
National Society, Daughters of the American Revolution
1776 D Street, N.W.
Washington, D.C. 20006

TESTIMONY - FEDERAL AND STATE AFFAIRS COMMISSION

TOPEKA, KANSAS FEBRUARY 5, 1975

I am the Kansas Province Director for the National Council of Catholic Women, a federation of local, diocesan, state and national organizations whose combined membership totals ten million women. I am here today as a representative of the Catholic women of Kansas, speaking in favor of the resolution to rescind the vote for the Equal Rights Amendment.

For 54 years NCCW has consistently supported legislation that safeguards womens right's, including the 1963 Equal Pay Act, The Civil Rights of 1964, and the Equal Opportunity Act of 1972 which forbids discrimination in every aspect of employment, including hiring, pay and promotions.

It is precisely because of our concern for women's rights that the National Council opposes the Equal Rights Amendment. They agree with eminent constitutional authorities that the Amendment will take away far more important rights than it will ever give.

Professor Paul Freund, of the Harvard Law School states, "That the proposed Equal Rights Amendment would open an era of regrettable consequences for the legal status of women in the country is highly probable. That it would certainly open up a period of extreme confusion in Constitutional Law is a certainty! The Amendment expresses noble sentiments, but I am afraid it will work much mischief in its actual application. It will open a Pandora's box of legal complications.

"If anything about the Amendment is clear, it is that it would transform every provision of law concerning women into a constitutional issue to be ultimately resolved by the Supreme Court. Every statutory and common law provision dealing with the manifold relations of women in society would be forced to run the gauntlet of attack on constitutional grounds.

"The purpose and effect of the Amendment will be to destroy <u>forever</u> the right of Congress and of the 50 States to pass any law that differentiates in any way between males and females."

Professor Philip Kurland of the University of Chicago Law School declares, 'It is a demand for unisex by constitutional amendment'.

Safeguards now contained in statutory and common law would be wiped out. According to an article in the YALE LAW JOURNAL of April 1971, concerned with the consequences of the Equal Rights Amendment, there would be drastic changes in many areas:

MILITARY SERVICE

> "A woman will register for the draft at age eighteen, as a man now does ... women will serve in all kinds of units and they will be eligible for combat duty ... neither the right to privacy nor unique physical characteristics justifies different treatment of the sexes with respect to voluntary or involuntary service."

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TESTIMONY - FEDERAL AND STATE AFFAIRS COMMISSION

DOMESTIC SERVICES

"In all states husbands are primarily liable for the support of their wives and children. The child support sections of the criminal nonsupport laws ... could not be sustained where only the male is liable for support."

CRIMINAL LAW

"The Equal Rights Amendment would not permit such laws (seduction, Statutory rape laws, prostitution, etc.) which base their sex discriminatory classification on social stereotypes. Courts would generally strike down these laws rather than extend them to men."

PROTECTIVE LABOR LAWS

"Under the Equal Rights Amendment, courts are not likely to find any justification for the continuation of such laws."

Mrs. Laurel Burley, a librarian at the University of California, who made an indept study of the consequences of the ERA on labor laws providing advantages to workingclass women states, "The major danger ... lies in the fact that it would in one swoop invalidate all protective legislation enacted by the States to protect women from exploitative employers."

In testimony before the Senate Judiciary Subcommittee in 1970, the AFL-CIO Legislative Director, Andrew J. Biemiller, voiced Labor's long-standing opposition to the 'essentially negative Amendment'.

Mr. Biemiller testified that the practical effect of the Amendment could wipe out State labor standards that apply specifically to women rather than to accomplish extension of coverage to men. He contended that the Amendment created no positive law in itself to combat discrimination against women.

In May 1970, Mrs. Norman Folda, then President of the National Council of Catholic Women, testified in opposition to the Equal Rights Amendment. She requested that the following statement based on resolutions passed at the Conventions of the National Council of Catholic Women be entered in the record of the hearings of the Senate Judiciary Sub-Committee in Washington:

"Again we strongly reiterate our opposition to the proposed Equal Rights Amendment to the U. S. Constitution as a threat to the nature of woman which individuates her from man in God's plan for His creation.

"Under the guise of equality, the proposed Amendment would in reality wipe out the many legal safeguards

cont'd

that protect woman's position in the family. Under the proposed Amendment maximum hours and minimum wage laws for women, widows' allowances, alimony and support payments, and the basic responsibility of man to provide for his family would be placed in jeopardy.

"Because it proposes an idea of woman foreign to the Christian concept of woman's co-equal, but individual dignity with man, and because it would destroy the legal safeguards women have secured through the years, we oppose the Equal Rights Amendment."

We respectfully ask this Committee to consider and to accept this Resolution to rescind the vote on the Equal Rights Amendment so it will not become a part of the Constitution of the United States.

By Pauline Carlson (Mrs. V. A.)
4005 Stratford Road
Topeka, Kansas 66604
272-8326

Catholics and the Equal Rights Amendment

Pope John XIII noted in *Pacem in Terris* that "women are now taking a part in public life" and that "since women are becoming more conscious of their dignity, they will not tolerate being treated as mere material instruments, but demand rights befitting a human person both in domestic and in public life."

In this context, the many Catholics who support the Equal Rights Amendment want to clarify their positions for citizens and legislators in states that have not yet ratified the amendment.

No official Catholic position exists on the ERA.

Individual Catholics and some Catholic organizations have taken a broad range of positions on the ERA.

This brochure represents the views of the growing number of Catholics who support passage of EQUAL RIGHTS AMENDMENT.

What the Catholic Church says about women's rights

"There is therefore in the Church no inequality on the basis of race or nationality, social condition or sex because 'there is neither Jew nor Gentile, there is neither slave nor freeman, *there is neither male nor female.* For you are all one in Jesus Christ' [Galatians 3/28, emphasis added]."

#32 Constitution on the Church
Vatican II

"With respect to the fundamental rights of the person, every type of discrimination, whether social or cultural, whether based on *sex,* race, color, social condition, language, or religion, is to be overcome and eradicated as contrary to God's intent [emphasis added]."

#29 Constitution on the Church in the Modern World
Vatican II

The purpose of the ERA

The purpose of the amendment is to provide constitutional protection for both men and women against laws which discriminate on the basis of sex. It will ensure that both men and women will be treated as individuals under the law.

Why we need the ERA

The necessary changes in our legal structures can be brought about most effectively by a constitutional amendment. Other routes to reform have not been working well:

—Women should not have to try to achieve legal rights on a case-by-case basis.

—The Fourteenth Amendment has not been adequate in achieving legal equality for women.

—Piecemeal legislative revisions, touted by some as the cure-all, have been slow and uncertain.

What the ERA will—and will not—do

The Catholic Church, and Catholics as individuals, are vitally concerned with responsible parenthood . . . home . . . family. We rightly ask, about new laws, What will they do to these cherished values?

The ERA will enable women—and men—to do what Pope John talks about: assert rights befitting a human person, in domestic life. It will not impose any adverse changes that affect children, home and family.

The Catholic Church, and Catholics as individuals, are also vitally concerned with human dignity . . . with the equality of all persons . . . with justice in laws and administration of laws . . . with fair working conditions . . . with a government that makes all these possible. We rightly ask, about new laws, What will they do to these cherished values?

The ERA supports these values.

That's why so many Catholics support the ERA.

How the ERA will affect the family

The ERA will allow women more options about how to contribute to the quality of life. NETWORK, a national organization of Catholic sisters working for social justice through legislation, points out that this opening up of possibilities does not threaten the essential dignity of women. **Sister Carol Coston, O.P.,** NETWORK, adds, "As women who have embraced an alternative life style that has long been honored in the Church, we are keenly aware of the need to sustain and support the rights of women to make choices without arbitrary legal impediments based on sex."

James Jennings, an instructor with the Washington Theological Consortium, bases his support of the ERA in part on his belief that the ERA can actually help family life. "I support the ERA because it will be an important and necessary step in allowing both women and men to achieve their full potential. Th growth and development on the part of both husbanu and wife can only have good effects on family life."

Msgr. John J. Egan, director of the Institute of Pastoral Ministry, Notre Dame University, is not worried about the ERA's effect on families. He says, "I believe that the ERA will allow women complete legal equality without infringing on their private lives or family relationships. I think our country needs the resources of women and therefore should not inhibit their potential by any legal discrimination."

Wording of proposed Equal Rights Amendment

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two ye after the date of ratification.

The arrangements that husbands and wives choose to work out between themselves, about family matters—child rearing, money management, job decisions, whether to have a new baby or buy a new car on credit—will, under the ERA, remain their own decisions. Such choices will surely be conditioned by a couple's cultural, religious and family backgrounds—but not by the ERA.

In cases of separation or divorce

- the ERA would strengthen the trend toward making the good of the child the chief yardstick in custody decisions—a trend that most Catholics would regard as desirable;
- women who need support would be awarded that support, as in the past.

The ERA and protective legislation

Some supporters of women's rights oppose the ERA out of well-intentioned but groundless fears that it might threaten the legal protections for women that have been built up over the years, especially in labor laws and welfare.

NOT SO. It *will* extend to men some benefits women now enjoy, but it will not rob women of any genuine protections. Rather, it will unmask some "protective" laws for what they have proven to be: thin disguises for excluding women from parts of the job market.

Under the ERA, employment would be based on a person's capacity to do a job, not on arbitrary rules that presume that no women can do what *any* man can do—laws restricting women's hours of work, for example.

Few would argue against genuinely protective labor laws—and the ERA will assure that such laws protect men as well as women. Meanwhile, many Catholics agree with **Sister Mary Luke Tobin, S.L.,** associate director of Church Women United and former president of the Leadership Conference of Women Religious, who supports the ERA because "it would help provide equal pay for ever larger numbers of women who are heads of families."

Barbara Brown et al, writing in *The Yale Law Journal,* concludes that under the Equal Rights Amendment, courts are "not likely to find any justification for the continuance of laws which exclude women from certain occupations. Legislatures which are concerned with real hazards in certain jobs will have to enact sex-neutral protections (April 1971, p. 929)."

Nancy Campbell, visiting professor of law at Catholic University, affirms that "ERA has no provisions that might be harmful to people on welfare.

Welfare laws do not contain sex discriminations. Insofar as it would have any effect at all, it would be helpful, because some provisions of the Social Security Act are at present discriminatory." For example, today if a woman dies or retires, her widower is not automatically entitled as a dependent to his wife's benefits. Under ERA he would be.

Perspectives on the ERA from Catholic leaders

Constitutional principles

"We hold that the constitutional principle of equality for women is just as important as those principles upholding rights against discrimination because of religion and race."

National Coalition of American Nuns

"Ratification of the Equal Rights Amendment would demonstrate that we are a Nation truly committed to equality. Ratification would go far toward ensuring that sex, like other immutable and irrelevant characteristics, plays no part in determining individual worth or opportunity."

Rev. Theodore M. Hesburgh, C.S.C.
President, University of Notre Dame
Former Chairman, U.S. Commission on Civil Rights
Chairman of the Board, Overseas Development Council

The Church's social teaching

"The passage of the Equal Rights Amendment forms one of the basic steps toward that equality of opportunity which makes the just society."

Rev. William Ryan, S.J.
Jesuit economist and religious writer
Peritus, 1971 Synod of Bishops
Member, U.S. Bishops' Committee on Social Development and World Peace

"It seems to me that the passage of the Equal Rights amendment is a matter of simple justice. Arguments against it ignore the facts: that experience proves that current legislation is insufficient to provide redress against the inequities at present built into our economic system by history and custom; that the poorest of the poor are women kept indigent by these inequities; that a large proportion of working women are single heads of households; that most women living today will spend 25 years or more in the labor force, etc. It is unthinkable that these women should continue to be treated as secondary citizens."

Abigail McCarthy, *author*

"The issue of promoting women's rights is basically an issue of structural social justice. The consistent social teaching of the Catholic Church calls for the opening up of all structures which inhibit freedom of individuals to lead full human lives. The passage of the ERA would open up the legal structures which now discriminate against women."

Rev. Peter Henriot, S.J.
Jesuit political scientist and theological writer
Member, planning group for U.S. Bishops' Bicentennial Justice Celebration

Basic human rights

"The United States, as one of the nations which feels most sophisticated and is listed first among the developed countries of the world, has yet to offer equality before the law to half its citizens. This principle has been declared a basic human right by the United Nations. I strongly urge that all citizens support the passage and implementation of the Equal Rights Amendment."

Jane Blewett, Catholic laywoman
Press representative, Bucharest Conference on Population
Rome Conference on World Food

"I support the passage of the Equal Rights Amendment because the present dual system of legal rights discriminates against half the population of America."

Rev. Joseph A. Francis, S.V.D.
President, Conference of Major Superiors of Men
Provincial, Society of the Divine Word

"As Catholic women we respond to the biblical injunction to justice. The Church is expressing its zeal for justice in working for a new fundamental law. For citizens of the U.S.A., the Equal Rights Amendment is our fundamental law."

Sister Thomas Aquinas Carroll, R.S.M.
Former President, Leadership Conference of Women Religious
Delegate, International Union of Superior Generals of Religious Women

World needs and human potential

"The challenges and solution to the world's problems and wounds require the full strength and dedication of all persons—male and female. The ERA is an essential condition and prerequisite to allow women, as well as men, to utilize the full measure of their personal resources."

Sister Margaret Brennan, I.H.M.
Consultant to U.S. Bishops' Committee on Women in Society and the Church

Legal opinion in support of the ERA

Both proponents and opponents of ERA quote from the April, 1971, Yale Law Journal issue on "The

Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women." Anti-ERA literature has often quoted this source out of context. For the record, the conclusion of The Yale Law Journal's scholarly report strongly favors passage of ERA:*

"The transformation of our legal system to one which establishes equal rights for women under the law is long overdue. Our present dual system of legal rights has resulted, and can only result, in relegating half of the population to second class status in our society. What was begun in the Nineteenth Amendment, extending to women the right of franchise, should now be completed by guaranteeing equal treatment to women in all areas of legal rights and responsibilities. We believe that the necessary changes in our legal structure can be accomplished effectively only by a constitutional amendment."

**The Citizens' Advisory Council on the Status of Women has a documented report on the misleading quotes.*

For further information

League of Women Voters of the United States
1730 M St., N.W.
Washington, D.C. 20036

Common Cause
2030 M St., N.W.
Washington, D.C. 20036

National Federation of Business and Professional Women's Clubs, Inc.
2012 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Citizens' Advisory Council on the Status of Women
Room 1336
Department of Labor Building
Washington, D.C. 20210

Catholic organizations which have endorsed the ERA

Catholic Women for the ERA
Catholic Caucus of the Ecumenical Task Force on Women and Religion
Las Hermanas
Leadership Conference of Women Religious
National Assembly of Women Religious
National Coalition of American Nuns
NETWORK
St. Joan's International Alliance (American Section)

JAMES J. KILPATRICK

The Case Against ERA

Proponents of "women's liberation" will mount a determined drive in 1975 to win ratification of the pending Equal Rights Amendment to the Constitution. Because of legislative changes resulting from the November elections, the effort may well succeed. State legislators would be well-advised, in my own view, to stop, look and listen before they vote to write this amendment into the supreme law of our land.

The case in favor of ERA has been eloquently argued both in Congress and in the 33 states that already have voted to ratify. In coming months such orgsnizations as the League of Women Voters and the Coalition of Labor Union Women will be lobbying hard for the proposition. The National Federation of Business and Professional Women's Clubs has raised $250,000 to finance a professionally managed campaign in eight target states.

As an abstract principle, the idea that "women should have the same rights as men" has undeniable political appeal.

The case against ERA has found few spokesmen and little organized effort. Mrs. Phyllis Schlafly's "Stop ERA Movement" is long on spunk but short on numbers. The opposition case merits a thoughtful hearing. In the opponents' view, the amendment—attractive as it seems at first glance—is (1) unnecessary, (2) uncertain and (3) undesirable. These arguments cannot be dismissed out of hand.

This amendment would write into the Constitution a single laconic sentence: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." If it is ratified by 38 states, the amendment would become operative two years later. Two states (Nebraska and Tennessee) have ratified but have attempted to rescind their approval. These rescissions probably are in vain. While the Supreme Court never has tackled the question squarely, the Court indicated in *Leser* v. *Garnett* (1922) and again in *Coleman v. Miller* (1939) that once a state's ratification is certified officially, judicial challenge, at least, is not likely to succeed.

In any event, whether five more or seven more states are needed, proponents are looking to North Carolina, North Dakota, Illinois, Missouri, Florida, Indiana, Nevada, Oklahoma and Arizona in the coming year. They have reason to be hopeful. In North Carolina six state Senators who once voted No on ERA have lost their seats; so have eight members of the North Carolina House. In North Dakota, where Democrats command solid majorities in both houses, proponents believe they can count 32 of the 50 state Senators and 55 of the 102 state Representatives. In Illinois, four legislators who are anti have been replaced by candidates pledged to vote in favor of ratification. In Missouri, Democratic caucuses indicate strong sentiment for approval.

In the face of this apparent trend, opponents interpose their three-point case:

1 *The amendment is unnecessary.* It is a sound proposition that constitutional amendment should be viewed as a political act of last resort. Ordinary statutes come and go. Supreme Court decisions can be modified or reversed; but the pending Equal Rights Amendment, once ratified, is there to stay. If time should demonstrate the unwisdom or the undesirability of ERA, only a monumental effort could achieve its repeal. Ratification is radical surgery. If any other effective way can be found to cure a political illness, surely the alternatives ought first to be tried.

Such alternative remedies already are being applied. The principal complaint of the women's liberationists goes to discrimination in employment. But Congress already has prohibited discrimination in employment by reason of sex. The Equal Employment Opportunity Commission labors unceasingly to enforce the law. Over the past 10 years the federal statute that established EEOC has produced a virtual revolution in employment practices, and the federal statute has been echoed in scores of remedial statutes at the state level. One by one, outdated state laws are being repealed.

Doubtless, many women still suffer discrimination in employment, but their problems, for the most part, are not matters of law but rather of law enforcement.

Case by case, the Supreme Court slowly is writing ERA into the Constitution anyhow. In *Reed* v. *Reed* the Court in 1971 nullified an Idaho probate law which said that in the administration of certain estates, "males must be preferred to females." Without a dissenting vote, the Court held the law void: "The

The Case Against ERA *continued*

arbitrary preference cannot stand in the face of the Fourteenth Amendment's command that no state deny the equal protection of the laws to any person within its jurisdiction. . . . To give a mandatory preference to members of either sex over members of the other . . . is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause."

In 1972 the Court buttressed its position. In one case, the Court forbade Massachusetts to discriminate against single persons. In another, it voted eight to one against a Louisiana law discriminating against illegitimate children. In a third, it nullified an Illinois child custody law. In the spring of 1973, Mr. Justice Brennan wrote the Court's eight-to-one decision, in *Frontiero* v. *Richardson*, having to do with unequal pay allowances for women in the armed forces. Classifications based upon sex, said the Court, are "inherently suspect."

This judicial trend continues. The Court has prohibited newspapers from using sexual classifications for "help wanted" ads. It has prohibited school boards from discriminating against pregnant teachers. In June of 1974 the Court put an end to unequal pay for men and women inspectors in a glass manufacturing company. During its current term, the Court will consider a challenge to a Navy regulation that discriminates between male and female officers. The Court will review a Utah statute that fixes the age of minority at 18 for women and 21 for men. The Court also will consider another Utah statute, this one dealing with child custody, that provides a "natural presumption that the mother is best suited to care for young children." Court observers are confident that the trends developed in *Reed* and *Frontiero* will be pursued.

The point is that by legislative enactment and by court decision, most of the invidious and unwarranted discrimination against women can be corrected. If the point is well taken, the radical surgery of an amendment to the Constitution can be avoided.

2. *The amendment is uncertain.* More than a hundred years have passed since there has been a constitutional amendment as vague and ambiguous as the pending ERA. As it now stands, the Constitution, when it speaks of "rights," speaks almost without exception in specific terms: There is the right of the people peaceably to assemble, the right of the people to keep and bear arms, the right of the people to be secure against unreasonable searches and seizures.

We know of the right to a speedy and public trial and the right to trial by jury. The Fifteenth, Nineteenth and 26th Amendments deal with the right to vote.

But as a matter of law—as a matter of actual application—what is meant by a constitutional commandment that "equality of rights under the law" shall not be denied or abridged on account of sex? No one knows. What is "right"? It is a lofty and resounding word, ordinarily linked to the great objects of a free people—to the rights of free press and freedom of religion, to the right of an accused to have counsel. If we assume that, in some jurisdiction, law requires that employers provide separate facilities labeled Men and Women, what of the effect of this amendment?

Does it create a *right* to a door labeled Persons? If so, ERA put a cavalier construction on a constitutional noun that has enjoyed more serious meaning.

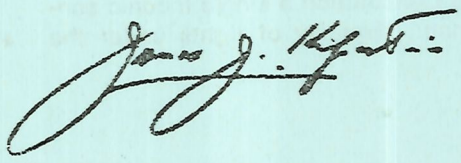
Whatever these rights may be, ERA says that no state shall deny or abridge them. The language stems from the first section of the Fourteenth Amendment. In constitutional shorthand, we are speaking of the doctrine of "state action." As the Fourteenth has been construed over the past century, and especially over the past two decades, the concepts of "state action" and "private action" have blurred. The concepts run together.

If all the gloss of the Fourteenth Amendment is to be transferred to the new ERA, a vast area of public/private actions will be affected—quite how, we do not know.

3. *The amendment is undesirable.* It is a truism that we live under the rule of law; it is a deeper truism that we live under the rule of the past, for "the law," at any given moment, is the embodiment of all that has gone before. The laws that today govern prostitution, adultery, child custody, divorce, inheritance and age of consent have ancient roots. We look to the Judeo-Christian ethic. We draw on civilizations and societies long forgotten. By some rough process of divining public opinion, known as the democratic process, we have acquired a body of law—including laws that treat women differently from men—that mirrors and protects our prevailing political desires.

This body of custom and tradition, so far as it involves sexual mores, cannot be treated as if it did not exist. People care about these things. If this were not so, the people of Cocoa Beach, Fla., would not have voted last November to prohibit topless bathing by women on the local beaches. Lawmakers would not have written laws providing special benefits for women factory workers, for abandoned mothers, for aged widows. Such laws reflect political and social realities. The legal structure is not perfect—of course it is not perfect, and of course it constantly changes—but the basic structure has been there a long, long time.

It is hard to believe that at a given moment in March of 1972, when Congress approved the Equal Rights Amendment and submitted it to the states, the people knowingly were demanding that this essential structure be destroyed. It seems to me highly doubtful that the people desire any such thing as "unisex" in their law. But if five more states—or seven—ratify the pending amendment, that is what the people will get.



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STATEMENT IN SUPPORT OF PROPOSITION THAT STATES MAY RESCIND THEIR RATIFICATION OF A CONSTITUTIONAL AMENDMENT PRIOR TO RATIFICATION BY THE REQUIRED THREE-FOURTHS OF THE STATES

Recently attention has again been focused on the question of whether having once ratified a proposed amendment to the U.S. Constitution, a state has the power to rescind its ratification. Assertions of ERA supporters to the contrary, this remains an open question.

Political Question

In Coleman v. Miller, 307 U.S. 433 (1939), the U.S. Supreme Court was asked to decide this question in the context of an attempt by the Kansas legislature to rescind its ratification of the Child Labor Amendment. The Court held that the question of the validity of withdrawal or of ratification after rejection is a political question, which is for Congress, and not for the courts, to decide. After reviewing the history of the adoption of the Fourteenth Amendment and noting that in that instance where the question arose it was decided by Congress, the Court declared:

> We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded

> as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment. (307 U.S. at 450)

The Court has not changed its view of this aspect of the "political question" doctrine in the years since Coleman. Baker v. Carr, 369 U.S. 186, 214 (1962).

Therefore, on the basis of Coleman, if a state's withdrawal became critical to the adoption or failure of a Constitutional amendment, it would be entirely within the discretion of Congress to decide whether or not the withdrawal was valid. The decision of Congress would not be subject to judicial review. Nor would Congress be bound by the decisions of previous Congresses on the question. However, an analysis of previous treatment of this question by Congress is of interest.

Adoption of the Fourteenth Amendment

Both Ohio and New Jersey ratified the Fourteenth Amendment and then passed resolutions rescinding their ratification. The legislatures of Georgia, North Carolina, and South Carolina initially rejected the Amendment. However, pursuant to the Act of March 2, 1867, 14 Stat. 428, their governments were reconstituted, and the new legislatures ratified the Fourteenth Amendment. Thus, the adoption of the Fourteenth Amendment raised both the question of the validity of withdrawal of ratification and the question of the validity of ratification following rejection. Upon the request of Congress, on July 20, 1861, the Secretary

of State (who then had the responsibility to receive notice of ratification from the states and to proclaim the adoption of constitutional amendments) reported that 29 states, including the two which had rescinded and the two which by then had ratified after first rejecting, had ratified, and that this number constituted the necessary three-fourths. However, he also expressed uncertainty over the validity of the rescinding resolutions of Ohio and New Jersey.

> ...[I]t is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual for withdrawing the consent of the said two States or of either of them, to the aforesaid amendment;...
>
> (15 Stat. 707)

Acknowledging his lack of authority to decide doubtful questions, the Secretary of State, therefore, certified that

> if the resolutions of the legislatures of Ohio and New Jersey ratifying the aforesaid amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid amendment has been ratified...
>
> (Id.)

Congress responded the next day by adopting a resolution which listed 29 states as having ratified, including Ohio and New Jersey (as well as North Carolina and South Carolina), stated that this number was "three-fourths and more of the Several States of the Union," and declared that the Fourteenth Amendment was thereby ratified. On July 28, the

Secretary of State proclaimed that the Fourteenth Amendment was part of the Constitution, 15 Stat. 708. Included in his list of states which had ratified were Ohio, New Jersey, North Carolina, South Carolina and Georgia (which had ratified on July 21).

Value of the Adoption of the Fourteenth Amendment as Historical Precedent

The Court in Coleman assumed that the Congressional action with regard to the Fourteenth Amendment was a decision on the merits on the validity of withdrawal. The Court accepted this decision as a political one not subject to review; however, close analysis of the Congressional action raises serious doubts as to what Congress actually did decide.

The dispute over whether the Fourteenth Amendment had been duly ratified also involved the issue of whether the seceding states should be counted for purposes of ratification. 1/ In January, 1868, members of both Houses had introduced resolutions to the effect that the seceding states should not be counted for purposes of ratification or for determining the number of ratifications needed for the amendment to be adopted since they had taken themselves out of the union and were to be governed at the sufferance of Congress until readmitted to equal status. Cong. Globe, 40th Cong., 2d Sess. 453, 475 (1868). At that time 22 states had ratified, and none had yet attempted to withdraw.

1/ See Corwin and Ramsey, "The Constitutional Law of Constitutional Amendment," 27 Notre Dame Lawyer, 185, 201-204 (1951).

After Ohio attempted to withdraw its ratification, Senator Sumner argued that the action of Ohio had no effect since the amendment had already become a part of the Constitution.

> This amendment was originally proposed by a vote of two thirds of Congress, composed of the representatives of the loyal States. It has now been ratified by the Legislatures of three fourths of the loyal States, being the same States which originally proposed it, through their representatives in Congress. The States that are competent to propose a constitutional amendment are competent to adopt it. Both things have been done. The required majority in Congress have proposed it: the required majority of States have adopted it. Therefore I say this resolution of the Legislature of Ohio is brutem fulmen--impotent as words without force.
>
> (Id. at 877)

If the ten states of the Confederacy were not counted, only 20 states would have been required to ratify, and this number had been reached without counting Ohio and New Jersey.

In an exchange with Sumner, Reverdy Johnson argued that a state could withdraw its ratification at any time before an amendment was adopted.

> . . . supposing the amendment not to have been adopted . . . my impression is that they can withdraw; . . . I look upon what the States do preliminary to a decision of a majority which, when made, makes the amendment proposed a part of the Constitution as a mere promise or undertaking that each will assent when the others are ready to assent, but that the day after the assent is given, or at any period subsequent to the giving of the assent, if the State assenting thinks that it has made a mistake, and that the Constitution should not be amended in the way proposed, it may withdraw its assent.
>
> (Id. at 878)

The resolution which Congress finally passed on July 21 went to the floor without any committee reports. It was approved by the Senate without debate and without a record vote. In the House, passage was by yea and nay vote also without debate. The lack of debate in either House and the lack of committee reports make it impossible to determine precisely what Congress had in mind in passing the resolution. Although the resolution listed all 29 states, it also referred to this number as "three-fourths and more" of the states. The resolution did not specifically answer the question of the validity of withdrawal or of ratification after rejection. The fact that Congress did not act until there were further ratifications would be consistent with either a rejection by a majority of Congress of Sumner's view that the states of the Confederacy should not be counted for purposes of ratification, or an acceptance of Johnson's view that a state could revoke its assent at any time before the amendment was adopted.

The turbulent Reconstruction political situation was reflected in the desire of many members of Congress to get the Fourteenth Amendment adopted as quickly as possible. Even those in the majority who disagreed about the validity of withdrawal and ratification after rejection were anxious to declare the amendment adopted. Thus, the resolution may have been deliberately vague to allow a majority of members to agree on the conclusion without necessarily accepting a particular theory on the question of withdrawal.

Adoption of the Fifteenth Amendment

That the action of Congress with respect to the Fourteenth Amendment was not regarded as an unequivocal decision on the question is indicated by the history of the adoption of the Fifteenth Amendment. Ohio ratified that amendment after first rejecting it, and New York attempted to withdraw its ratification. Although the question was debated in Congress, no mention was made of Congress' action in adopting the Fourteenth Amendment. Cong. Globe 41st Cong. 2d Sess. 1477, 1479. Although a resolution similar to the one which was passed regarding the Fourteenth Amendment was introduced in the Senate, it never reached a vote. The Secretary of State proclaimed the adoption of the Fifteenth Amendment only after two more states had ratified it. The proclamation listed both as having ratified, although it noted New York's resolution to withdraw. Cong. Globe, 41st Cong., 2d Sess. 2290 (1870).

At the time the Fifteenth Amendment was under consideration, a bill was introduced which would have declared any attempt at revocation of a state's ratification null and void. The bill passed the House, but died in the Senate after being reported unfavorably by the Judiciary Committee. Cong. Globe, 41st Cong., 2d Sess. 5356(1870), Cong. Globe, 41st Cong., 3d Sess. 1381 (1871). A similar joint resolution had earlier died in the Senate. Id. at 3971.

Other Considerations

Since Congress has never squarely decided this question, and in any case its past treatment of the question would not be binding, Congress is free to take into account whatever factors it deems relevant in resolving the issue of the validity of withdrawal.

One consideration is suggested by the Court in Dillon v. Gloss, 256 U.S. 368 (1921). That case said that it is a policy of Article V that ratification should "reflect the will of the people in all sections at relatively the same period." Thus, if the "will of the people" is to be fairly reflected, Congress in deciding whether an amendment has been adopted should take into account public sentiment as indicated by either withdrawal or ratification after rejection.

Marcia A. Rotunda
Legislative Attorney
American Law Division
March 15, 1973

2-5-75

I came here today to speak for the large majority of women living in Representative Dierdorff's district and we have asked him to introduce this rescinding resolution for us.

We would have approved the ERA if Senator Hayden's modification would have been added to the original wording of the ERA legislation. Senator Hayden's modification reads as follows: "The provisions of this article shall not be construed to impair any rights, benefits or exemptions conferred by law upon persons of the female sex." The women who supposedly were representing all the women in these United States to secure equal rights for us did not want this addition to their ERA legislation and perhaps we should ask why. We admit that there is some discrimination in employment for women and in equal pay for equal work. We support women in their efforts to eliminate injustices of this type. However we believe this can be done by going through the Civil Right's Act of 1964 but especially through the Equal Employment Opportunity Act of 1972. The Equal Rights Amendment will not give women anything which we do not already have or have a way of getting. Many people have supported this amendment because they thought it would give us equal pay for equal work which is a desirable objective. However, the ERA is limited only to what happens in federal and state laws and will affect only federal and state employees. On the other hand the Federal Equal Employment Opportunity Act does extend to private industry and there isn't anything that the ERA can do that the Equal Employment Opportunity Act hasn't already done so we really don't need the ERA. The Equal Employment Opportunity Act is very explicit in respect to hiring and pay and promotion. If any woman thinks she has been discriminated against, she should file her claim with the federal government and the government will pay all the costs. There have been enormous settlements in the last two years including the $38,000,000 settlement with AT &T. This settlement had to make extra payments not only to girls who had been discriminated against in pay but also to girls who hadn't been promoted and thought they should have, so you can see how far reaching the scope of this act really is.

Representatives, I would like to tell you what happened in Maryland in November,

1972, when they approved an amendment to the Maryland Constitution which had the same wording as the Federal ERA--"equality of rights under the law shall not be abridged or denied because of sex." After examining the Maryland laws, the Attorney General of the State of Maryland drew up a list of 227 state laws which had to be modified because of the passage of the Maryland ERA. When the new legislature convened in January, 1973, Sen. Newton I. Steers, Jr., introduced 82 laws into the General Assembly to bring Maryland's laws into conformity with the new Maryland ERA.

The women in Maryland were greeted with such new bills as SB 353 which makes a wife criminally liable for the support of her husband. SB 355 makes a wife liable for her husband's debts, and no provision is made to exempt the wife from her husband's debts, even if he has deserted her and she has children to support. SB 396 deletes the present protection of a wife's property from the debts of her husband. SB 343 equalizes alimony so that a wife can be required to pay alimony to her husband. SB 393 authorizes the court to require a wife to make weekly support payments to her husband and children. SB 287 makes women automatically part of the state militia with no exemptions provided for pregnant women or women with small children and no provision made for separate barracks or facilities.

We think the small percentage of women who are promoting the ERA can achieve any and all of the rights they are seeking under the present laws and they have every right to lobby for individual rights. However, we do not think they have a right to speak for all women or to lobby for mandatory legislation through a law that would take away personal rights of other women.

I would like to quote from Dr. Jonathan H. Pincus, professor of Neurology at the Yale Medical School: "I would predict that the Equal Rights Amendment and many of the other goals of its proponents would bring social disruption, unhappiness and increasing rates of divorce and desertion. Weakening of family ties may also lead to increased rate of alcoholism, suicide, and possible sexual deviation." If any of you have studied the causes of delinquency, I believe you will agree that marital troubles, broken homes, etc., are a major factor in bringing on these problems. We have enough delinquency,

enough crime, without adding to the problem with an ERA amendment which would force women out of the home into the already too crowded employment picture.

I would appreciate your consideration of the points that I have presented, and I want to thank you for the opportunity of allowing me to present them.

Mrs. Cap C. Streit
Downs, Kansas 67437

STATEMENT
by
Clyde Schinnerer
Scott City, Kansas

at the hearing of the
Committee on Federal and State Affairs
Topeka, Kansas
February 5, 1975

concerning

HCR 2009, a resolution to rescind HCR 1155, concerning the Equal Rights Amendment (ERA)

* * * * *

Mr. Chairman, my name is Clyde Schinnerer of Scott City, Kansas, where I own and operate a farm, and I am appearing to urge this committee's support of HCR 2009, a resolution to rescind HCR 1155. I believe the ERA has many inherent dangers that most people have not considered, only now the people who would be affected are beginning to understand the magnitude of what is being proposed.

One very serious matter would be the continued separation of church and state. There are many religious bodies who still adhere to the Biblical doctrine that only men are to be preachers and elders. (1 Timothy 2:11, 12; 3:2; Titus 1:5, 6). It would be a violation of the principle of church and state and certainly this proposed Amendment would take precedence over any previous amendments that conflict with it. Senator Sam Ervin, Jr., former U.S. Senator and noted constitutional attorney said, "The most recent Constitutional Amendment takes precedent over all other sections of the Constitution with which it is inconsistent."

Certainly, we don't want the women of our great land to be mistreated, denied their proper rights, and to not have their rightful place in the human race. But let's look closely. What inequities in the laws are causing abuse to women in Kansas? If the proponents of ERA can name even as many as five inequities in the laws, let's change those laws rather than giving the Federal Government jurisdiction in family affairs. Laws such as the Civil Rights ACt of 1964, The Equal Opportunities Act of 1972, and many others give protection against discrimination at all levels. If the ERA is ratified and becomes a part of the Constitution it will eliminate many of the privacy protection laws we now have. Sexual discrimination will be just as illegal as racial discrimination. Let the first man be thrown out of a ladies restroom and the court will have to decide that he cannot be discriminated against. Let me quote from the Dan Smoot Report, March 13, 1974, "In many "Civil Rights" decisions involving racial matters, the courts have declared the "separate but equal" doctrine illegal."

Let me point out to you that the ERA will take away states rights, Kansas and all the other 49 states, in equality rights and gives them to Congress. The States will forfeit all rights of legislation, giving Congress a "blank check" in legislating laws to implement the Amendment and the Supreme Court sole authority to interpret those laws. We find there were no qualifying statements given when Congress passed the ERA on March 22, 1972. "ERA is much like a single broad-spectrum drugh with uncertain and unwanted side effects as opposed to a specific pill for a specific ill." Paul Freund, Harvard Civil Rights-Civil Liberties Law Review, Vo. 6., No.2, March 1971.

Those proponents of ERA are pressing the issue that a State Legislature cannot rescind their ratification and yet are working very hard to get states to ratify who have already rejected the Amendment as Oklahoma did just two weeks ago. Their's is a double standard. There is nothing in the U.S. Constitution or any Federal or State laws, or any decision of the U.S. Supreme Court which denies this right to a State Legislature. ERA proponents often cite the 14th Amendment in their claim that it is illegal for State Legislatures to rescind a previous ratification. However, no one who knows anything about the history of the ratification of the 14th Amendment could possibly cite it as a legal precedent for anything. The Coleman v. Miller case (1939) is often times referred to but here the action was the other way. Kansas had rejected the proposed child-labor Amendment to the U.S. Constitution and then 14 years later ratified it. It was held then that this was illegal and given to the Supreme Court for decision. They muddied the water somewhat, but the ultimate decision was that the Kansas Legislature could reverse itself and change its mind after it had previously acted on ratification of a Constitutional Amendment. Most Supreme Court Justices, when handling the case of Coleman v. Miller in 1939, felt: (1) that they had no right to handle the case because it involved a political question outside the jurisdiction of federal courts, (it has always been consistent in its position that the amending process is a "political question", not subject to "judicial interference"), (2) that as long as a proposed Amendment to the Constitution is pending - not having been ratified by three-fourths of all State Legislatures - a State Legislature can change its mind about ratifying or rejecting the proposal.

In conclusion, let me point out that this country has always set its women in high esteem. Wars have been fought, prairies and forrests tamed to provide for their wives and children. We don't want our women fighting our wars for us. As all of you men know who have lived in an all male environment, we don't want our women subjected to such conditions. Thank you.

Please note the attached sheet showing that distinguished authorities oppose ERA.

Distinguished Authorities Oppose ERA

"When the Amendment was before Congress, I tried in every way I knew how to convince the Senate that this legislation should be amended to preserve protective legislation passed for the benefit of women; to require fathers to be responsible for family support; to exempt women from the draft and combat duty; and to preserve right-to-privacy laws and criminal laws for sex offenses. I deeply regret I was unsuccessful in my efforts and the Amendment passed the Senate unchanged.

"My view that the *ERA is the most destructive piece of legislation to ever pass Congress* still stands and I am hopeful that it will be defeated in the states."

Senator Sam J. Ervin, Jr.,
United States Senate

"I do not wish to see -- and to vote for -- a constitutional amendment which would require all women to be equally obligated with their husbands to support the family, even though millions of women may choose to do so. . . .

"I cannot in good conscience support a proposal to take away from all women the protections which reasonable men and women consider reasonable protection for women."

Congresswoman Leonor K. Sullivan,
United States House of Representatives

"Not only would women, including mothers, be subject to the draft but the military would be compelled to place them in combat units alongside of men. The same rigid interpretation could also require that work protective laws reasonably designed to protect the health and safety of women be invalidated; . . . in some cases it could relieve the fathers of the primary responsibility for the support of even infant children, as well as the support of the mothers of such children and cast doubt on the validity of the millions of support decrees presently in existence."

U.S. House Judiciary Committee Report,
No. 92-359, July 14, 1971

"In all the swirling arguments and differing interpretations of the language of the proposal, there has been very little thought given to the triple role most women play in life, namely, that of wife, mother and worker. This is a heavy role indeed, and to wipe away the sustaining laws which help tip the scales in favor of women is to do injustice to millions of women who have chosen to marry, to make a home, to bear children, and to engage in gainful employment as well. . . . I refuse to allow the glad-sounding ring of an easy slogan to victimize millions of women and children."

Congressman Emanuel Cellar,
United States House of Representatives

"That the proposed Equal Rights Amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty. . . . The Amendment expresses noble sentiments, but I'm afraid it will work much mischief in actual application. It will open a Pandora's box of legal complications."

Professor Paul Freund,
Harvard Law School

"The so-called Equal Rights Amendment . . . is largely misrepresented as a women's rights amendment when in fact the primary beneficiary will be men. I am opposed to its approval."

Professor Philip B. Kurland,
University of Chicago Law School

"Is the Equal Rights Amendment to be the Tonkin Gulf Resolution of the American social structure? . . . I would predict that the Equal Rights Amendment and many of the other goals of its proponents will bring social disruption, unhappiness and increasing rates of divorce and desertion."

Dr. Jonathan H. Pincus,
Professor of Neurology,
Yale Medical School

The Equal Rights Amendment "would minimize legal reinforcement of cultural mores supportive of family life, tend to degrade the homemaker role, and support economic development requiring women to seek careers. Plato's concept of common women and common children (public child care is implied by degrading the homemaker role) may not be far away. . . . It seems clear that a cultural revolution of proportions beyond the ken of the proponents of the Amendment is implied."

Professor Arthur E. Ryman, Jr.,
Drake University

"Only those who are ignorant of the nature of law and of its enforcement and regardless of the intricacies of American constitutional law, or indifferent to the exacting aspects of woman's industrial life, will have the naivete or the recklessness to sum up woman's whole position in a meaningless and mischievous phrase about 'Equal Rights'."

Justice Felix Frankfurter,
New Republic Magazine

"In the beginning of mining, there were women down in those mines and children. . . . We got the women and children out of the mines, you know. . . . I've been against the Equal Rights Amendment always . . . The core of activist support for the ERA comes from middle class white women, but passage of the ERA would endanger the hard won rights of working women -- both black and white."

Dr. Margaret Mead, Anthropologist,
Columbia University

"Use of the law in an attempt to conjure away all the differences which do exist between the sexes is both an insult to the law itself and a complete disregard of fact."

Professor Bernard K. Schwartz,
New York University Law School

"I call the Equal Rights Amendment the liftin' and totin' bill. More than half of the black women with jobs work in service occupations; if the Amendment becomes law, we will be the ones liftin' and totin', so passage of ERA is not our first priority."

Jean Noble, Executive Director,
National Council of Negro Women

STATEMENT
by
Clyde Schinnerer
Scott City, Kansas

at the hearing of the
Committee on Federal and State Affairs
Topeka, Kansas
February 5, 1975

concerning

HCR 2009, a resolution to rescind HCR 1155, concerning the Equal Rights Amendment (ERA)

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National Council of Negro Women

STATEMENT
by
Clyde Schinnerer
Scott City, Kansas

at the hearing of the
Committee on Federal and State Affairs
Topeka, Kansas
February 5, 1975

concerning

HCR 2009, a resolution to rescind HCR 1155, concerning

the Equal Rights Amendment (ERA)

* * * * *

Mr. Chairman, my name is Clyde Schinnerer of Scott City, Kansas, where I own and operate a farm, and I am appearing to urge this committee's support of HCR 2009, a resolution to rescind HCR 1155. I believe the ERA has many inherent dangers that most people have not considered, only now the people who would be affected are beginning to understand the magnitude of what is being proposed.

One very serious matter would be the continued separation of church and state. There are many religious bodies who still adhere to the Biblical doctrine that only men are to be preachers and elders. (1 Timothy 2:11, 12; 3:2; Titus 1:5, 6). It would be a violation of the principle of church and state and certainly this proposed Amendment would take precedence over any previous amendments that conflict with it. Senator Sam Ervin, Jr., former U.S. Senator and noted constitutional attorney said, "The most recent Constitutional Amendment takes precedent over all other sections of the Constitution with which it is inconsistent."

Certainly, we don't want the women of our great land to be mistreated, denied their proper rights, and to not have their rightful place in the human race. But let's look closely. What inequities in the laws are causing abuse to women in Kansas? If the proponents of ERA can name even as many as five inequities in the laws, let's change those laws rather than giving the Federal Government jurisdiction in family affairs. Laws such as the Civil Rights ACt of 1964, The Equal Opportunities Act of 1972, and many others give protection against discrimination at all levels. If the ERA is ratified and becomes a part of the Constitution it will eliminate many of the privacy protection laws we now have. Sexual discrimination will be just as illegal as racial discrimination. Let the first man be thrown out of a ladies restroom and the court will have to decide that he cannot be discriminated against. Let me quote from the Dan Smoot Report, March 13, 1974, "In many "Civil Rights" decisions involving racial matters, the courts have declared the "separate but equal" doctrine illegal."

Let me point out to you that the ERA will take away states rights, Kansas and all the other 49 states, in equality rights and gives them to Congress. The States will forfeit all rights of legislation, giving Congress a "blank check" in legislating laws to implement the Amendment and the Supreme Court sole authority to interpret those laws. We find there were no qualifying statements given when Congress passed the ERA on March 22, 1972. "ERA is much like a single broad-spectrum drugh with uncertain and unwanted side effects as opposed to a specific pill for a specific ill." Paul Freund, Harvard Civil Rights-Civil Liberties Law Review, Vo. 6., No.2, March 1971.

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National Council of Negro Women

Exchange with constituents - please

The Phyllis Schlafly Report

VOL. 6, NO. 10, SECTION 2 Box 618, ALTON, ILLINOIS 62002 MAY, 1973

Section 2 of the Equal Rights Amendment

The seldom-mentioned Section 2 of the Equal Rights Amendment provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." This simple sentence constitutes a gigantic grab for power at the Federal level. Section 2 will transfer jurisdiction over women's rights, domestic relations, and criminal law and property law pertaining to women, out of the hands of the State Legislatures and into the hands of the Federal Government: the Congress, the executive branch, and the Federal courts.

The State Legislatures, individually and collectively, constitute that part of our governmental system which is closest to the will of the people. Members of the State Legislatures are known personally to most of their constituents. No democratic or beneficial purpose can be served by transferring power and discretion out of their hands to the Federal bureaucrats and ultimately to the Federal courts, which is the body of our Government least responsive to the will of the people.

The immediate and dramatic effect of ratification of ERA would be a grab of substantial power by the Federal Government over matters that heretofore have been generally acknowledged to be the primary and, in some cases, the exclusive legislative responsibility of the States. These would include family law, divorce, child custody, alimony, minimum marriageable age limits, dower rights, inheritance, survivor's benefits, insurance rates, welfare, prison regulations, and protective labor legislation. All state and local laws, policies and regulations involving *any* difference of treatment between the sexes will be overridden by Federal legislation, which means, ultimately, administrative regulation. Every aspect of civil and criminal law which specifies men or women will be subject to challenge in the Federal courts, as a constitutional issue, and ultimately by the U.S. Supreme Court. For example, the women's liberationists are already demanding revision of primary school textbooks which, they claim, are "sexist" because they perpetuate the "stereotype" of women as mothers and homemakers.

"Affirmative Action" for Quotas

If past experience in other "rights" areas is any guide, it is probable that ratification of the Equal Rights Amendment will be quickly followed by Federal administrative regulations requiring "affirmative action" to achieve quotas of women in political, industrial, academic and other areas. The sweeping settlement recently enforced on AT&T by the Equal Employment Opportunity Commission, which required money payments to women for jobs for which they had never even applied, shows the broad scope of legislation already on the books.

ERA would give officious Federal bureaucrats the constitutional excuse to order "affirmative action" to reach mandatory quotas -- in other words, to require employers to go out and seek women workers even when they are not looking for employment. A portent of things to come is seen in the way Federal officials forced Columbia University to submit an "affirmative action" plan for hiring women and minorities, or face the loss of $13.8 million in Government contracts.

Women's liberationists are already arguing that, since women comprise 53 percent of the population, they are entitled to 53 percent of Congress and State Legislatures. Are our gentlemen members of those bodies ready to rise and give their seats to the libbers?

Section 2 in Other Amendments

In testifying before the State Legislative hearings, the ERA proponents rarely mention Section 2. They pretend it doesn't exist. In answer to questions raised by the Legislators, the ERA proponents have one stock reply. They say, "Don't worry about Section 2 because many other constitutional amendments have a similar Section 2, and it is just customary enabling language." Let us examine this argument.

There are seven constitutional amendments which have a similar Section giving Congress the power to enforce by appropriate legislation. A study of these amendments makes clear that every one did, indeed, transfer power *from* the State Legislatures *to* the Federal Government.

Five of these constitutional amendments pertain to voting rights: the 15th Amendment giving the blacks the right to vote, the 19th Amendment giving women the right to vote, the 23rd Amendment giving a vote in the electoral college to the District of Columbia, the 24th Amendment guaranteeing the right to vote without a poll tax, and the 26th Amendment giving 18-year olds the right to vote. It is obvious that every one of these amendments did, indeed, constitute a transferral of power to the Federal level. For example, prior to the 19th and 26th Amendments, many states had given the vote to women or to those under 21 years of age. After the 19th and 26th Amendments were ratified, the states no longer could exercise any legislative option because the decision in this area had moved to the Federal level. In the case of the 14th

Amendment, the Section giving Congress the power to legislate has opened the door to endless litigation and extensions of Federal power never dreamed of by its authors.

There is one constitutional amendment, however, which does not have a Section 2: the 16th Amendment which gave Congress the power to levy an income tax. It is abundantly clear that, in the absence of a Section 2, the individual states retained their power, too. As everyone knows, the power to levy an income tax is exercised separately and concurrently both by Congress *and* the separate states in their respective jurisdictions.

The dramatic difference between those constitutional amendments which have a Section 2 and those which do *not* proves that State Legislatures will be voting away their own powers if they ratify ERA.

The Original Version of Section 2

Section 2 of the Equal Rights Amendment originally read: "Congress and the several states shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation." The words "and the several states . . . within their respective jurisdictions" were deleted before passage by Congress.

A recent research paper by the Congressional Research Service of the Library of Congress states that those words were deleted because of an opinion presented by ERA proponent Louis H. Pollak, Dean of the Yale Law School. He predicted that those words would be a "dangerous illusion" because "the Federal courts might read this provision as requiring the same degree of judicial deference to state statutes purporting to implement the Amendment as would normally be given to Federal statutes implementing the Amendment: this could mean that the parochial (and, as might often be the case, mutually inconsistent) statutes of State Legislatures would assume an unprecedented degree of apparent dignity and consequent unreviewability merely because they were denominated implementations of this Amendment."

Executive Interference

The Founding Fathers, in their wisdom, gave no part of the amendment process to the executive branch of the Government. The President cannot sign or veto a constitutional amendment. It is simply outside of his jurisdiction. The amending process is one aspect of our Government which is exclusively a legislative function: Congress proposes and the State Legislatures dispose.

The strenuous activity of the executive branch of the Federal Government in behalf of ratification of the Equal Rights Amendment *proves* that Section 2 of ERA is a grab for power at the Federal level. It reveals that the Federal bureaucrats can hardly wait to Federalize all laws and regulations pertaining to women in order that their own power and perquisites will be extended. Professor Charles E. Rice of the Notre Dame Law School told the Illinois General Assembly on March 19, 1973:

"The President has no Constitutional role in the process of amending the Constitution. If the President is actively promoting the adoption of the Amendment, it is fair to surmise that his activity in the area and the activity of Congress will be substantial if Congress and he, as the executor of the laws, are vested with actual enforcement authority by adoption of the Amendment."

The White House activity in behalf of ERA includes both political intimidation and improper use of the taxpayers' money. Presidential adviser Anne Armstrong, operating out of the White House, has been sending letters, phone calls, and personal representatives to State Legislators urging ratification of ERA. A message from "the White House" always carries with it the implication that it speaks for the President and is a means of intimidation.

Mrs. Armstrong admitted to reporter Vera Glaser that she has been making long-distance telephone calls to states where ERA is in trouble and intended to go on the road to mobilize support in State Legislatures. Washington reporter David Broder recently described Mrs. Armstrong's $30,000 job like this: "She's been given a variety of assignments and keeps a staff of six professionals busy working on projects ranging from lobbying for the ratification of the Equal Rights Amendment to providing White House liaison with the Bicentennial Commission."

Another White House aide, Mrs. Jill Ruckelshaus, has personally traveled to State Legislatures and appeared on television in support of ERA, presenting herself as a spokesman for the White House. Republican National Chairman George Bush, also a spokesman for the White House, has been sending telegrams to State Legislators urging ratification of ERA.

Meanwhile, the employees of the Citizens' Advisory Council on the Status of Women are lobbying for ERA ratification at the taxpayers' expense. Mrs. Catherine East, Executive Secretary, and fulltime employee of the Department of Labor, testified for ERA at hearings in Illinois and West Virginia. This Citizens' Council, which has an $80,000 budget, has published and distributed thousands of copies of several expensive booklets at the taxpayers' expense promoting ratification of ERA. The Council even published an uncalled for and untrue pamphlet attacking Senator Sam Ervin's Minority Report against ERA.

Tax-Funded Lobbyists

In addition to using the taxpayers' money for the salaries of Federal employees in the White House and in the Department of Labor and for printing and mailing expensive Government booklets, the ERA proponents have devised another secret scheme to fund ERA lobbyists at State Capitols. This is done through the various Governor's Councils on the Status of Women. While the Council members themselves are non-salaried, in some states they have hired a fulltime professional and arranged for her salary to be paid from a little-known Federal fund available in the Department of Labor called "Emergency Unemployment" grants.

These fulltime professionals function in practice as paid lobbyists for ERA. Activities of these professional tax-funded lobbyists vary from state to state and include testifying at hearings, coordinating pro-ERA efforts, and sometimes directly confronting State Legislators and threatening them with defeat if they vote no. In some states, there are Mayor's Councils as well as Governor's Councils to sponsor a tax-paid ERA lobbyist. Such political activity by persons funded by "Emergency Unemployment" grants is clearly illegal.

It is time to put a stop to the shocking way that our State Legislators are being lobbied and our citizens are being politically propagandized at the taxpayers' expense. This is a complete subversion of the democratic process and a harbinger of what is in store for us in the future by way of Federal enforcement of the Equal Rights Amendment through the enabling clause called Section 2.

In South Carolina, a lawsuit has been filed to halt the improper and illegal lobbying for ERA by a tax-funded professional hired by the State Commission on the Status of Women. It offers an excellent example of how other states can take action.

Lets cut off taxes as such, Rue.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF COMMON PLEAS

Theresa Hicks in behalf of herself and others too numerous to mention as a class,

Petitioners,

-vs- PETITION

The Commission on the Status of Women, and Honorable Grady L. Patterson, Jr. as Treasurer of the State of South Carolina, and the South Carolina Commission on Human Affairs,

Respondents.

PETITIONER WOULD SHOW UNTO THIS HONORABLE COURT:

No. 1 That Petitioner is a citizen and resident of Richland County, South Carolina and brings this action in behalf of herself and all others similarly situated, as a class too numerous to mention; that such class is composed of citizens opposed to the enactment of what is commonly known as the Equal Rights Amendment, (ERA).

No. 2 That Respondent, Commission on the Status of Women, is a Commission created by the State of South Carolina (and an adjunct thereof (Acts 1970 (56) 2321) codified under Title 9, Secs. 451, et seq. of the South Carolina Code of Laws, 1962, as amended, and the Respondent South Carolina Commission on Human Affairs is a Commission, adjunct of the State of South Carolina, created by it (Act 1457 (1972) and Honorable Grady L. Patterson is the duly qualified and Acting Treasurer of South Carolina.

No. 3 That the Commission on the Status of Women was appointed to study the status of women and make periodic reports to the Governor, with its recommendations concerning: educational needs and opportunities, social insurance and tax laws, Federal and State labor laws dealing with hours and wages, differing legal treatment of men and women in regard to political, social, civil, proprietary rights and family relations, new and expanded services that may be required for women as wives, mothers and workers, including education, counseling, training, home service and arrangements for care of children during the working day, the employment policies and practices of the State of South Carolina with reference to additional affirmative steps which should be taken through legislation, executive or administrative action to assure nondiscrimination on the basis of sex and to enhance constructive employment opportunities for women; and the South Carolina Commission on Human Affairs, that the South Carolina Commission on Human Affairs was created to prevent discrimination because of race, creed, color, sex, age or national origin and to foster mutual understanding and respect among all people in this State with its principal offices in the City of Columbia, County and State aforesaid.

No. 4 To such end the members of the South Carolina Commission on Human Affairs were provided with pay, per diem, mileage and subsistence from the general tax funds of the State.

No. 5 That while drawing such remuneration and enjoying such funding such Commissions have been and/or are permitting their number to act ultra-vires and in violation of their charters, and in further violation of the rights of Petitioners in one or more of the following particulars:

(1) Petitioners have historically and constitutionally enjoyed certain rights, privileges and immunities peculiar to their status and station in life with reference to the ownership and devolution of property, including dower rights and inheritance.

(2) Special provisions in respect to places where females are employed, including rest places, rest times and other facilities all as set forth under Title 40, Secs. 256, et seq. of the Said Code of Laws.

(3) Special provisions with reference to penalogy of women and young girls all according to Title 55, Sec. 151, et seq. of said Code of Laws.

(4) Codified as well as common law and/or precedent rights with reference to abortions (see Title 16, Sec. 82, et seq. of said Code, and recent Supreme Court decisions); whereas such rights, under circumstances Respondents would have, would be available to men as well as women.

(5) Special treatment in freedom from civil arrest (under the protection of Title 10, Sec. 803 of said statutory provisions).

(6) Lower insurance rates afforded under Title 37, Sec. 148.1.

(7) Separate facilities at jails provided under Title 55, Sec. 425.

(8) Special jury exemptions provided under Title 38, Sec. 104, and amendments thereto.

(9) Labor provisions contained under Title 40, Secs. 81, et seq.

(10) Rights to be free from molestation and obscene telephone calls.

(11) The ages of consent to sex and marriage; and freedom from seduction.

(12) The rights to support and a domestic competence from their husbands backed by criminal sanctions should he fail to so provide.

(13) The rights to Social Security dependency benefits.

(14) Rights pertaining only to females under disorderly conduct, rape and other statutes in such cases made and provided.

(15) Rights of freedom from military service and conscription.

(16) The rights to make special recovery in civil proceedings for disfigurement.

(17) The right to recover for the loss of consortium.

(18) Encroachments in the field of religious guarantees under State and Federal Constitutions as such pertain in belief and application to the special status of women, widows and orphans.

(19) The right to alimony, suit money, counsel fees and special provisions of law pertaining to divorce, separation and annulment.

(20) Right to suits for slander and libel for imputation of want of chastity, and

(21) In various particulars involving rights, privileges and immunities construed under the 5th and 14th Amendments of the Federal Constitution and Article 1, Sec. 5 of the Constitution of the State of South Carolina.

No. 6 That said Commissions charged with making objective reports and acting for the good of all, rather than acting objectively as charges have taken up a cause commonly known as "women's lib" and in so doing totally ignored the needs and rights of those like Petitioners who see the overall situation in a different constitutional, legal and historical perspective and they have weighted their reports and taken a popular one-sided view, and abandoned their duties and are waging and/or are permitting a member or members of their number to wage an all-out campaign or crusade to destroy the traditional mores, customs and laws, all of which pose a serious and present threat to break down the social fabric of our State and nation and destroy the family as the cornerstone of society; that they have sent communication and/or are permitting a member or members of their number to send to members of the State Legislature (without employing a proper lobby for such purposes) to vote the views they so espouse or suffer the consequences, and, in so doing, they are unlawfully and improperly using Petitioners' tax moneys against them as well as the General Assembly which created them as an adjunct of the State with limited objectives.

No. 7 That Respondents have been actively carrying on such crusade in the press and via other public media and have employed persons to carry on private propaganda through the mails and by other means supressing the idea that while certain groups (as Petitioners) enjoying a classification or discrimination based on reasonable distinctions possess rights, privileges and immunities, they would, if their efforts succeed, impose on all in such classes the same duties and status without distinction and thereby deprive Petitioners of such rights, privileges and immunities they now enjoy; that such campaign is being unfairly waged with the public funds resulting in Petitioners having their own tax funds used against them, against their will, and without due process of law under a disguise or banner which only on the surface proclaims that women should be given equal pay as men for the same work (a proposition to which all reasonable persons agree) (and for which ample statutory authority and legal precedent is already present) that while members of Respondent Commission should have a right to their own personal, individual political views, having accepted such offices, the use of such offices for personal purposes is a breach of good faith, and, if while espousing such goals only on their own time, they cannot accept pay for accomplishing a public purpose while privately destroying that for which they have accepted public trust and pay.

No. 8 That unless Respondents are restrained and enjoined from so abusing their offices and accepting the public funds entrusted to them, it is probable Petitioners will suffer and they are suffering irreparable damages and being forced to finance political ends at odds with their personal consciences and views; that no person shall be required to support or defend that which is against his own conscience.

No. 9 That while the South Carolina Commission on Human Affairs is charged with creating and recognizing advisory agencies and conciliation councils composed of all representative citizens, Petitioners have been unable to discover an agency or council recognized by them as sharing Petitioners' views, and, in fact the members and counsel for such Commission are going about as disciples of the National Organization of Women (NOW) and promoting disharmony rather than seeking the legitimate concern of the State as expressed in the Act to promote harmony and the betterment of human affairs.

No. 10 That such acts and doings by such Commission are per se discriminatory to Petitioners based on their sex and mala fides.

WHEREFORE: Petitioner prays this Honorable Court do inquire herein and restrain and enjoin Respondents from such ultra-vires and unlawful acts *pendente lite* and grant temporary and permanent injunctions against the State Treasurer from disbursing the public funds to Respondents until the further Order of this Court and until Respondents are acting within the purview of the Act for which they were created and that this Court do issue its writ of Mandamus requiring Respondents to carry out their responsibilities as announced in such Act and that they be restrained and enjoined from acting ultra-vires thereunder and they be required to act within the narrow corridors so provided and for such other and further relief as may be meet and just.

JACK F. McGUINN
Attorney for Petitioners

February 2, 1973.
Columbia, South Carolina

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ARTICLE 1. VICTIMS OF CRIME [NEW]

Sec.
13960. Declaration of purpose.
13961. Victim of crime defined.
13962. Filing of claim; forms; time of presenting claim.
13963. Hearing; notice; report of attorney general; approval of claim; amount; attorney's fees; subrogation; intervention by state.
13964. Fine imposed in addition to penalty for conviction of crime of violence; determination by court.
13965. Law enforcement agency; duty to inform persons eligible to file claim.
13966. Payment of claims.

Heading of Article 1 added by Stats.1969, c. 1111, p. 2167, § 2; Stats. 1969, c. 1431, p. 2936, § 2.

Claims by victims, see 2 Cal.Adm.Code 648 et seq.

Law Review Commentaries
Aid to victims of violent crimes in California. Willard Shank (1970) 43 So.Cal.L.R. 85.
Governmental compensation for riot victims. (1971) 11 Santa Clara L. 415.
Remedies for the victims of crime. LeRoy L. Lamborn (1970) 43 So.Cal.L.R. 22.

§ 13960. Declaration of purpose

The Legislature hereby declares that it serves a public purpose, and is of benefit to the state, to indemnify those needy residents of the State of California who are victims of crimes committed in the State of California, and those needy domiciliaries of California who are injured as a consequence of an act committed while temporarily in another state or jurisdiction where such act, if committed in California, would have been a public offense, for the injuries suffered as a result of the commission of the crimes.
(Added Stats.1967, c. 1546, p. 3707, § 1.)

Law Review Commentaries
Aid to victims of criminal violence (1965) 18 Stan.L.R. 266.
Marital violence. Elizabeth Truninger (1971) 23 Hast.L.J. 259.
Prospectus for research on victim-compensation in California. Gilbert Geis (1966) 2 C.W.L.R. 85.
Victim compensation plans. (1969) 55 A.B.A.J. 159.

Library references
States ⇐123.
C.J.S. States § 156.

1. In general
Where it was not shown that any employees of restaurant-bar knew that robber of coffee shop was waiting outside nor that establishment was a "tough joint", patron, who after employee allegedly asked him to obtain license number, went into parking lot and spoke to person, the robber, and was shot by him was not, as a matter of law, contributorily negligent and did not assume the risk but was precluded from recovery on ground that restaurant-bar could not be found to have anticipated that robber would not immediately flee or probability of injury resulting therefrom. Young v. Desert View Management Corp., (1969) 79 Cal.Rptr. 848, 275 C.A.2d 294.

§ 13961. Victim of crime defined

A victim of a crime as used in this chapter is any person who sustains injury to himself, or pecuniary loss as a result of physical injury or death of another person on whom he is financially dependent, and which is the consequence of an act considered to be a public offense, as defined by Penal Code Section 15, whether the actor is criminally liable or not.
(Added Stats.1967, c. 1546, p. 3707, § 1.)

§ 13962. Filing of claim; forms; time of presenting claim

(a) The victim of a crime of violence, his family, or any persons dependent upon the victim for their support may file a claim with the State Board of Control, provided that the crime was committed in California and the applicant was a resident of California, or provided the claimant is a domiciliary of California who was injured while temporarily in another state or jurisdiction.

(b) The State Board of Control shall provide indemnification claim forms for purposes of this section and shall specify the information to be included in such forms.

(c) The claim must be presented by the claimant to the Board of Control within a period of one year after the date of death or injury and no claim not so presented shall be considered by the Board of Control.

(Added Stats.1967, c. 1546, p. 3707, § 1.)

Contents of claims, see 2 Cal.Adm.Code 648.1.
Form of claims set out, see 2 Cal.Adm. Code 648.2.
Time of presenting claims, see 2 Cal. Adm.Code 648.

Law Review Commentaries
Aid to victims of criminal violence (1965) 18 Stan.L.R. 266.

§§ 13963. Hearing; notice; report of attorney general; approval of claim; amount; attorney's fees; subrogation; intervention by state

Upon presentation of any such claim, the Board of Control shall fix a time and place for the hearing of the claim, and shall mail notices thereof to interested persons or agencies and to the Attorney General. Prior to the hearing, the Attorney General shall investigate the facts of each claim, including the claimant's financial condition, filed pursuant to this chapter, and prepare a report thereof. The Attorney General shall at the hearing submit to the board, and the board shall receive the report, together with any evidence which he may have obtained as a result of his investigation. At the hearing, the board shall receive evidence showing

(a) The nature of the crime committed and the circumstances involved;
(b) That as a direct consequence, the victim incurred personal injury;
(c) The extent of such injury;
(d) The need of the claimant;
(e) Such other evidence as the board may require.

If the board determines, on the basis of a preponderance of such evidence, that the state should indemnify the claimant for the injury sustained, it shall approve the claim for payment. The board shall determine that the state should indemnify a person who files a claim pursuant to this chapter if there is need for such indemnification, except that such a claim may be denied if the claimant has not cooperated with the police in the apprehension and conviction of the criminal committing the crime.

The maximum amount for which the board may approve a claim pursuant to this section shall not exceed the amount necessary to indemnify or reimburse the claimant for necessary expenses incurred for hospitalization or medical treatment, loss of wages, loss of support, or other necessary expenses directly related to the injury. If continued hospitalization or medical treatment is necessary, a partial award may be made and the claim subsequently reconsidered for the purpose of recommending an additional award.

In addition the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award.

A claim shall be reduced to the extent that the claimant has received indemnification from any other source. If a claim is paid under this chapter the state shall be subrogated to the rights of the claimant to whom such claim was paid against any person causing the damage or injury for which payment was made to the extent of the payment of the claim. The state may recover the amount of the claim paid in a separate action, or may intervene in an action brought by the claimant. In no event shall a claim be approved pursuant to this section in excess of five thousand dollars ($5,000).

(Added Stats.1967, c. 1546, p. 3707, § 1.)

Claim as basis for award, see 2 Cal.Adm. Code 648.4.
Determination of need, see 2 Cal.Adm. Code 648.5.
Disallowance of claims, see 2 Cal.Adm. Code 648.3.

Law Review Commentaries
Aid to victims of violent crimes in California. Willard Shank (1970) 43 So.Cal.L.R. 85.

§ 13964. Fine imposed in addition to penalty for conviction of crime of violence; determination by court

Upon conviction of a person of a crime of violence committed in the State of California resulting in the injury or death of another person who was a resident of the State of California at the time the crime was committed, the court shall take into consideration the defendant's economic condition, and unless it finds such action will cause the family of the defendant to be dependent on public welfare, may, in addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed. The fine shall be deposited in the Indemnity Fund in the State Treasury, which is hereby continued in existence, and the proceeds in such fund shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this chapter.
(Added Stats.1967, c. 1546, p. 3707, § 1.)

Library references
Fines ⇐1½, 20.
C.J.S. Fines §§ 1 et seq., 19.

§ 13965. Law enforcement agency; duty to inform persons eligible to file claim

(a) The * * * law enforcement agency investigating a crime shall provide forms to each person * * * who may be eligible to file a claim pursuant to this chapter * * *. The * * * law enforcement agency shall obtain from the board any forms which may be necessary in the preparation and presentation of such claims.

(b) If a victim of a crime does not cooperate with a state or local law enforcement agency in the apprehension and conviction of the criminal committing the crime, the agency shall immediately notify the board of such lack of cooperation.
(Added Stats.1967, c. 1546, p. 3707, § 1. Amended by Stats.1970, c. 389, p. 801, § 1.)

§ 13966. Payment of claims

Claims under this chapter shall be paid from a separate appropriation made to the State Board of Control in the Budget Act and as such claims are approved by the board.
(Added Stats.1967, c. 1546, p. 3707, § 1.)

ARTICLE 2. CITIZENS BENEFITING THE PUBLIC [NEW]

Sec.
13970. Direct action of citizens as benefiting public; indemnification in certain cases.
13971. Private citizen defined.
13972. Claim for indemnification; filing; contents.
13973. Hearing; notice; evidence.
13974. Rules and regulations.

Article 2 added by Stats.1969, c. 1111, p. 2168, § 3.5; Stats.1969, c. 1431, p. 2938, § 3.5.

Indemnification of citizens benefiting public, see 2 Cal.Adm.Code 647 et seq.

§ 13970. Direct action of citizens as benefiting public; indemnification in certain cases

Direct action on the part of private citizens in preventing the commission of crimes against the person or property of others, or in apprehending criminals, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, benefits the entire public. In recognition of the public purpose served, the state may indemnify such citizens, their widows, * * * their surviving children, and any persons dependent upon such citizens for their principal support in appropriate cases for any injury, death, or damage sustained

CHAPTER 5. VICTIMS OF CRIME
(Chapter 5 added by Stats. 1967, Ch. 1546)

13960. The Legislature hereby declares that it serves a public purpose, and is of benefit to the state, to indemnify those needy residents of the State of California who are victims of crimes committed in the State of California, and those needy domiciliaries of California who are injured as a consequence of an act committed while temporarily in another state or jurisdiction where such act, if committed in California, would have been a public offense, for the injuries suffered as a result of the commission of the crimes.

(Added by Stats. 1967, Ch. 1546.)

13961. A victim of a crime as used in this chapter is any person who sustains injury to himself, or pecuniary loss as a result of physical injury or death of another person on whom he is financially dependent, and which is the consequence of an act considered to be a public offense, as defined by Penal Code Section 15, whether the actor is criminally liable or not.

(Added by Stats. 1967, Ch. 1546.)

13962. (a) The victim of a crime of violence, his family, or any persons dependent upon the victim for their support may file a claim with the State Board of Control, provided that the crime was committed in California and the applicant was a resident of California, or provided the claimant is a domiciliary of California who was injured while temporarily in another state or jurisdiction.

(b) The State Board of Control shall provide indemnification claim forms for purposes of this section and shall specify the information to be included in such forms.

(c) The claim must be presented by the claimant to the Board of Control within a period of one year after the date of death or injury and no claim not-so presented shall be considered by the Board of Control.

(Added by Stats. 1967, Ch. 1546.)

13963. Upon presentation of any such claim, the Board of Control shall fix a time and place for the hearing of the claim, and shall mail notices thereof to interested persons or agencies and to the Attorney General. Prior to the hearing, the Attorney General shall investigate the facts of each claim, including the claimant's financial condition, filed pursuant to this chapter, and prepare a report thereof. The Attorney General shall at the hearing submit to the board, and the board shall receive the report, together with any evidence which he may have obtained as a result of his investigation. At the hearing, the board shall receive evidence showing

(a) The nature of the crime committed and the circumstances involved;

(b) That as a direct consequence, the victim incurred personal injury;

(c) The extent of such injury;

(d) The need of the claimant;

(e) Such other evidence as the board may require.

If the board determines, on the basis of a preponderance of such evidence, that the state should indemnify the claimant for the injury sustained, it shall approve the claim for payment. The board shall determine that the state should indemnify a person who files a claim pursuant to this chapter if there is need for such indemnification, except that such a claim may be denied if the claimant has not cooperated with the police in the apprehension and conviction of the criminal committing the crime.

The maximum amount for which the board may approve a claim pursuant to this section shall not exceed the amount necessary to indemnify or reimburse the claimant for necessary expenses incurred for hospitalization or medical treatment, loss of wages, loss of support, or other necessary expenses directly related to the injury. If continued hospitalization or medical treatment is necessary, a partial award may be made and the claim subsequently reconsidered for the purpose of recommending an additional award.

In addition the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award.

A claim shall be reduced to the extent that the claimant has received indemnification from any other source. If a claim is paid under this chapter the state shall be subrogated to the rights of the claimant to whom such claim was paid against any person causing the damage or injury for which payment was made to the extent of the payment of the claim. The state may recover the amount of the claim paid in a separate action, or may intervene in an action brought by the claimant. In no event shall a claim be approved pursuant to this section in excess of five thousand dollars ($5,000).

(Added by Stats. 1967, Ch. 1546.)

13964. Upon conviction of a person of a crime of violence committed in the State of California resulting in the injury or death of another person who was a resident of the State of California at the time the crime was committed, the court shall take into consideration the defendant's economic condition, and unless it finds such action will cause the family of the defendant to be dependent on public welfare, may, in addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed. The fine shall be deposited in the Indemnity Fund in the State Treasury, which is hereby continued in existence, and the proceeds in such fund shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this chapter.

(Added by Stats. 1967, Ch. 1546.)

13965. (a) The district attorney of each county shall inform each person in the county who may be eligible to file a claim pursuant to this chapter of such eligibility. The district attorney of each county shall obtain from the board any forms which may be necessary in the preparation and presentation of such claims.

(b) If a victim of a crime does not cooperate with a state or local law enforcement agency in the apprehension and conviction of the criminal committing the crime, the agency shall immediately notify the board of such lack of cooperation.

(Added by Stats. 1967, Ch. 1546.)

13966. Claims under this chapter shall be paid from a separate appropriation made to the State Board of Control in the Budget Act and as such claims are approved by the board.

(Added by Stats. 1967, Ch. 1546.)

ARTICLE 22 [1]—CRIME VICTIMS COMPENSATION BOARD [NEW]

[1] Two additional articles 22 relating to council on architecture and natural beauty commission are set out preceding this article.

Sec.
620. Declaration of policy and legislative intent.
621. Definitions.
622. Crime victims compensation board.
623. Powers and duties of the board.
624. Eligibility.
625. Filing of claims.
626. Minimum allowable claim.
627. Determination of claims.
628. Consideration of decisions by full board.
629. Judicial review.
630. Emergency awards.
631. Awards.
632. Manner of payment.
633. Confidentiality of records.
634. Subrogation.
635. Severability of provisions.

Article added L.1966, c. 894, eff. Aug. 1, 1966.

Effective date of L.1966, c. 894. Section 3 of L.1966, c. 894, provided: "This act [adding this article] shall take effect immediately, [August 1, 1966] but the provisions of article twenty-two of the executive law, as added by this act, shall apply only to claims resulting from crimes committed on or after March first, nineteen hundred sixty-seven."

Law Review Commentaries

Compensation for victims of crimes of violence. 31 Albany L.Rev. 120.

§ 620.[1] Declaration of policy and legislative intent

The legislature recognizes that many innocent persons suffer personal physical injury or death as a result of criminal acts. Such persons or their dependents may thereby suffer disability, incur financial hardships, or become dependent upon public assistance. The legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the legislature's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

[1] Another section 620 relating to natural beauty commission is set out in article immediately preceding this article.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 621.[1] Definitions

For the purposes of this article:

1. "Board" shall mean the crime victims compensation board.

2. "Claimant" shall mean the person filing a claim pursuant to this article.

3. "Crime" shall mean an act committed in New York state which would, if committed by a mentally competent criminally responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed by the penal law, provided, however, that no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purposes of this article unless the injuries were intentionally inflicted through the use of a vehicle.

4. "Family", when used with reference to a person, shall mean (a) any person related to such person within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with such person, or (c) any person residing in the same household with such person.

5. "Victim" shall mean a person who suffers personal physical injury as a direct result of a crime. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

[1] Another section 621 relating to natural beauty commission is set out in article immediately preceding this article.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 622.[1] Crime victims compensation board

1. There is hereby created in the executive department a board, to be known as the crime victims compensation board. Such board shall consist of three members, no more than two of whom shall belong to the same political party, who shall be appointed by the governor by and with the advice and consent of the senate. The members of the board shall have been admitted to practice law in the state of New York for not less than ten years next preceding their appointment.

2. The term of office of each such member shall be seven years, except that the members first appointed shall serve for terms of seven years, five years and three years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

3. The governor shall designate one member of the board as chairman thereof, to serve as such at the pleasure of the governor.

4. The members of the board shall devote their whole time and capacity to their duties, and shall not engage in any other occupation, profession or employment, and shall receive an annual salary to be fixed by the governor within the amount made available therefor by appropriation. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

[1] Another section 622 relating to natural beauty commission is set out in article immediately preceding this article.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 623.[1] Powers and duties of the board

The board shall have the following powers and duties:

1. To establish and maintain a principal office and such other offices within the state as it may deem necessary.

2. To appoint a secretary, counsel, clerks and such other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

3. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this article, including rules for the approval of attorneys' fees for representation before the board or before the appellate division upon judicial review as provided for in section six hundred twenty-nine of this article.

4. To request from the division of state police, from county or municipal police departments and agencies and from any other state or municipal department or agency, or public authority, and the same are hereby authorized to provide, such assistance and data as will enable the board to carry out its functions and duties.

5. To hear and determine all claims for awards filed with the board pursuant to this article, and to reinvestigate or reopen cases as the board deems necessary.

6. To direct medical examination of victims.

7. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subdivision may be delegated by the board to any member or employee thereof. A subpoena issued under this subdivision shall be regulated by the civil practice law and rules.

8. To take or cause to be taken affidavits or depositions within or without the state.

9. To render each year to the governor and to the legislature a written report of its activities. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

[1] Another section 623 relating to natural beauty commission is set out in article immediately preceding this article.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 624.[1] Eligibility

1. Except as provided in subdivision two of this section, the following persons shall be eligible for awards pursuant to this article:

(a) a victim of a crime;

(b) a surviving spouse, parent or child of a victim of a crime who died as a direct result of such crime; and

(c) any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime.

2. A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the

family of such persons shall not be eligible to receive an award with respect to such claim. Added L.1966, c. 894, § 1; L.1968, c. 661, eff. June 16, 1968.

[1] Another section 624 relating to natural beauty commission is set out in article immediately preceding this article.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

Subd. 1 amended L.1968, c. 661, eff. June 16, 1968. L.1968, in par. (b), inserted "parent."

§ 625.[1] Filing of claims

1. A claim may be filed by a person eligible to receive an award, as provided in section six hundred twenty-four of this article, or, if such person is a minor, by his parent or guardian.

2. A claim must be filed by the claimant not later than ninety days after the occurrence of the crime upon which such claim is based, or not later than ninety days after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing for a period not exceeding one year after such occurrence.

3. Claims shall be filed in the office of the secretary of the board in person or by mail. The secretary of the board shall accept for filing all claims submitted by persons eligible under subdivision one of this section and alleging the jurisdictional requirements set forth in this article and meeting the requirements as to form in the rules and regulations of the board.

4. Upon filing of a claim pursuant to this article, the board shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within ten days after such notification, such district attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this article until such time as such criminal prosecution has been concluded and shall so notify such district attorney and the claimant. When such criminal prosecution has been concluded, such district attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to section six hundred twenty-nine of this article. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

[1] Another section 625 relating to natural beauty commission is set out in article immediately preceding this article.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 626.[1] Minimum allowable claim

No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars or has lost at least two continuous weeks earnings or support. Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

[1] Another section 626 relating to natural beauty commission is set out in article immediately preceding this article.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 627. Determination of claims

1. A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims

arising from the death of an individual as a direct result of a crime, shall be considered together by a single board member.

2. The board member to whom such claim is assigned shall examine the papers filed in support of such claim. The board member shall thereupon cause an investigation to be conducted into the validity of such claim. Such investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which such claim is based.

3. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.

4. The board member to whom a claim is assigned may decide such claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of such claim. If the board member is unable to decide such claim upon the basis of such papers and such report, he shall order a hearing. At such hearing any relevant evidence, not legally privileged, shall be admissible.

5. After examining the papers filed in support of such claim and the report of investigation, and after a hearing, if any, the board member to whom such claim was assigned shall make a decision either granting an award pursuant to section six hundred thirty-one of this article or deny the claim.

6. The board member making a decision shall file with the secretary a written report setting forth such decision and his reasons therefor. The secretary shall thereupon notify the claimant and furnish him a copy of such report. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 623. Consideration of decisions by full board

1. The claimant may, within thirty days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the board for consideration of such decision by the full board.

2. Any member of the board may, within thirty days after the filing of such report, make an application in writing to the board for consideration of such decision by the full board.

3. Upon receipt of an application pursuant to subdivision one or two of this section, the board shall review the record and affirm or modify the decision of the board member to whom the claim was assigned. The action of the board in affirming or modifying such decision shall be final. The board shall file with the secretary of the board a written report setting forth its decision, and if such decision varies in any respect from the report of the board member to whom the claim was assigned setting forth its reasons for such decision. If the board receives no application pursuant to subdivision one or two of this section the decision of the board member to whom the claim was assigned shall become the final decision of the board.

4. The secretary of the board shall promptly notify the claimant, the attorney general and the comptroller of the final decision of the board and furnish each with a copy of the report setting forth such decision. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 629. Judicial review

1. Within thirty days after receipt of the copy of the report containing the final decision of the board, the attorney general may, if in his judgment the award is improper or excessive, commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board. Within thirty days after receipt of the copy of such report, the comptroller may, if in his judgment the award is improper or excessive, request the attorney general to commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board in which event the attorney general shall commence such a proceeding. Such proceeding shall be heard in a summary manner and shall have precedence over all other civil cases in such court. There shall be no other judicial review of any decision made or action taken by the board, by a member of the board or by the secretary of the board with respect to any claim.

2. Any such proceeding shall be commenced by the service of notice thereof upon the claimant and the board in person or by mail. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 630. Emergency awards

Notwithstanding the provisions of section six hundred twenty-seven of this article, if it appears to the board member to whom a claim is assigned, prior to taking action upon such claim, that (a) such claim is one with respect to which an award probably will be made, and (b) undue hardship will result to the claimant if immediate payment is not made, such board member may make an emergency award to the claimant pending a final decision in the case, provided, however, that (a) the amount of such emergency award shall not exceed five hundred dollars, (b) the amount of such emergency award shall be deducted from any final award made to the claimant, and (c) the excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the board. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 631. Awards

1. No award shall be made unless the board or board member, as the case may be, finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to, or death of, the victim, and (c) police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

2. Any award made pursuant to this article shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury.

3. Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this article, be in an amount equal to the actual loss sustained, provided, however, that no such award shall exceed one hundred dollars for each week of lost earnings or support, and provided further that the aggregate award for such loss shall not exceed fifteen thousand dollars. If there are two or more

persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned by the board among the claimants.

4. Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received as a result of the injury (a) from or on behalf of the person who committed the crime, (b) under insurance programs mandated by law, (c) from public funds, (d) as an emergency award pursuant to section six hundred thirty of this article.

5. In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the board or board member, as the case may be, may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

6. If the board or board member, as the case may be, finds that the claimant will not suffer serious financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this article to meet such loss of earnings, support or out-of-pocket expenses, the board or board members shall deny an award. In determining such serious financial hardship, the board or board member shall consider all of the financial resources of the claimant. The board shall establish specific standards by rule for determining such serious financial hardship. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 632. Manner of payment

The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 633. Confidentiality of records

The record of a proceeding before the board or a board member shall be a public record; provided, however, that any record or report obtained by the board, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

§ 634. Subrogation

Acceptance of an award made pursuant to this article shall subrogate the state, to the extent of such award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made. Added L.1966, c. 894, § 1, eff. Aug. 1, 1966.

Article as applicable only to crimes committed on or after March 1, 1967, see note preceding section 620.

Criminal Law Bulletin, Jan.-Feb., 1973

Part I—Public Compensation of Victims of Crime: A Survey of the New York Experience*

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Duncan Chappell‡ **L. Paul Sulton**‡‡

It is not entirely by accident that our criminal law shows little affirmative concern for the victims of crime. Punishment and responsibility represent the core of criminal law and while harm—and thus a victim—is assumed, the focus is on the offender.

Victims make headlines, particularly if the event is as tragic as the killing of Arthur Collins described early in this article; victims sign complaints, appear as witnesses, and occasionally even bring a civil

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The authors owe particular gratitude to the commissioners and the staff of the New York Crime Victims Compensation Board for their outstanding cooperation. Special mention must be made of Stanley L. Van Rensselaer, the board chairman, a pioneering figure in the field who has molded the form of the New York program and provided invaluable expertise to those who have set out to establish systems in their own jurisdictions. We are also most grateful to those New York victims of crime who consented to tell us about their experiences with and reactions to victimization.

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action based on the same conduct involved in the criminal prosecution. Since the state proceeds in its own name in a criminal case, it can be argued that it supersedes the individual victim and assumes victim status in order to vindicate its overriding interests.

The basic point is clear: When the criminal law abandoned its early reliance on compensatory and restitutionary justice, it also abandoned the individual victim for all practical purposes. A successful prosecution may serve to vindicate abstract notions of justice; it may provide psychological satisfaction for some victims—often purchased at great expense, harassment, repeated court appearances, even threats of contempt—but there the matter typically ends.

Victims have been used by politicians for their dramatic value, as in "what about the victim!" That victims have achieved a more positive political status is well illustrated by the following two-part article. In a most detailed fashion, the authors describe the New York victim-compensation program; the precipitating events, the drive to achieve legislation, the operation of the board, and an analysis of how the program operates.

California and New York traditionally set the pace for legislative innovation and on the premise that compensation for victims is an idea whose time has come, the authors provide a richness of detail to aid those jurisdictions which surely will follow. Along with a detailed history, the reader will discover the assets as well as the shortcomings of the New York program. And there is that little homily about he who ignores history. . . .

Ultimately, this program provides limited financial aid to the victims of violent crime and their families and only if they also suffer serious financial hardship. That some may see this as radical is remarkable when one considers the extent and variety of suffering by some victims and how limited money, vis-à-vis an obligation to make whole, really is.

Part I deals with the background of crime-prevention compensation, outlining the reasons for its creation in New York, and begins a discussion and evaluation of its practical application that are continued in Part II, scheduled to appear in the March 1973 issue.

Appearing recently before a United States Senate committee considering a measure to provide compensation to crime victims in the District of Columbia, Representative Abner J. Mikva, one one of the earliest and most articulate proponents of such laws, labeled victim compensation an idea "whose time has come." [1]

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[1] U.S. Senate, Committee on the District of Columbia, "Compensation of Victims of Crime," 91st Cong., 1st Sess. 67 (1970).

He is probably correct. At the moment, eight states have programs which, in varying degrees and in varying ways, provide financial assistance to crime victims.[2] There is a strong bipartisan legislative thrust in the Congress to subsidize state programs to the extent of 75 percent of their costs.[3] This proposed legislation will provide a powerful inducement to enact victim-compensation programs in the states which do not now have them.[4]

Under these circumstances, it seems appropriate to report as fully as possible the results of our examination of the New York victim-compensation program. There is much analytical and speculative literature on victim compensation, but we know of no study concentrating in detail on how a program operates. The New York program, begun in early 1967, represents the longest-established operation of its sort in the country, with the exception of an atypical effort undertaken a year earlier in California. What has been learned in New York should help states which contemplate establishing crime-victim-compensation systems. The New York experience also provides information as background for debate on most of the major issues concerning victim compensation, including matters such as the preferable method of administrative arrangements, issues relating to the financial needs of victim-claimants, and questions of maximum and minimum limits on awards.[5]

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[2] These states are Alaska (1972), California (1966), Georgia (1972), Hawaii (1967), Maryland (1968), Massachusetts (1968), New Jersey (1971), and New York (1967).

[3] A measure (S. 2994) designed to effect this subsidizing of state programs and to establish a victim-compensation program for the District of Columbia and other federal territories received Senate approval on September 18, 1972: "Senate Bill Would Aid Victims of Crime," N.Y. Times, Sept. 19, 1972. At the time of writing this paper, the measure had not been approved by the House of Representatives and such approval appeared unlikely at the present session of Congress.

[4] Rhode Island, for instance, has already enacted legislation to take effect 120 days following the enactment of federal victim-compensation legislation.

[5] It should be noted that this research project is not limited to New York. The Battelle Law and Justice Center is continuing a detailed examination of the work of crime-victim-compensation programs in other parts of the United States and in foreign jurisdictions. On the basis of that further work, we may alter some of the materials in this report on the New York experience. Nevertheless, we believe the present need for information about established programs is of sufficient importance to warrant early publication of the results of this facet of our research.

The Genesis of the New York Program

It is characteristic of the American legislative process that dramatic and dire events often provide the necessary stimulus for enactment of legislation that otherwise might languish, despite its value, attractiveness, and latent political and public support. Reformative and drug legislation of the early 1900s had to wait for the tragedy of seventy-two deaths from "elixir sulfanilamide," a toxic patent medicine, before it could gather adequate congressional support.[6] Reform of the abortion laws was greatly hastened by poignant reports of the birth of crippled children following the use of thalidomide by pregnant women.[7] The plight of an Arizona television star who had taken thalidomide without knowledge of its potentially damaging effects, and who now unsuccessfully sought an abortion in the United States, added dramaturgy which ultimately led to reexamination of the abortion statutes.[8]

In New York, the fatal stabbing of twenty-eight-year-old Arthur F. Collins on October 9, 1965 provided the major motive force that led to introduction and passage of legislation granting compensation to victims of violent crime. Collins, trying to assist several elderly women who were being bothered by a drunken man on a subway, put the man off the car. While his twenty-six-year-old wife, holding the couple's fifteen-month-old daughter in her arms, looked on helplessly, the drunk dashed back into the car, plunged a knife into Collins's chest, and escaped.

Collins's death had heart-rendering consequences for his family. He had served in the Army for two years prior to securing a job as a computer programmer at Pan American World Airways. He was earning about $6,000 a year. The company continued his salary for an additional month, and provided a job for Mrs. Collins. Employees had also contributed $3,000 to the widow, but in order to work she felt it necessary to send her daughter to her grandmother in West Germany.[9]

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[6] Toulmin, *A Treatise on the Law of Food, Drug, and Cosmetics* 9 (1942).

[7] "Abortion and the Changing Law," Newsweek, April 13, 1970, p. 56; "Abortion Reform: History, Status, and Prognosis," 21 Case W. Reserve L. Rev. 521 (1970).

[8] "George Gallup: Public Gives Its View on Finkbine Case," Los Angeles Times, Sept. 12, 1962.

[9] Ross, "The *Victims* of Crime Deserve a Break," Reader's Digest 173 (July 1967).

Public concern with violence on the streets, in apartment house elevators, and on the subways quickly focused on Collins's murder, which became a symbol of reform campaigns. After the Collins killing, a special police patrol was established to ride the subways during hours when violence was considered most likely to occur. A public debate began about the obligations of the city and state to assist innocent victims of crimes of violence.

Two days after Collins was slain, John J. Gilhooley, acting chairman of the Transit Authority, urged that financial compensation be given to the families of people disabled or killed while aiding others:

> "I hope the City Council and State Legislature will conduct searching inquiries into the feasibility of providing adequate financial compensation to families where the breadwinner has been permanently incapacitated or killed when acting as a surrogate in the protection of his fellow man, as did brave Arthur Collins on Saturday night." [10]

On November 23, 1965, five weeks after Collins's death, a good samaritan statute was introduced into the New York City Council by its vice-chairman and cosponsored by three other councilmen. The bill, which had been requested by the Transit Authority, noted that "direct action on the part of private citizens in preventing crimes against the person or property of others, preserving the peace or preventing public disturbances, benefits the entire public life." [11] It authorized awards for the death or injury of any person other than a peace officer caused during an attempt on a public street or in a city-owned transit facility to prevent a crime or to preserve the peace. The award was to be fixed in the discretion of the Board of Estimate as a matter of grace and not as a matter of right. For personal injuries, payments would compensate for loss of earnings and for medical expenses. In the event of death, the award for a surviving spouse, child, or dependent could be paid either in a lump sum or in the form of periodic payments. The amount could not exceed the pension available to a survivor of a first-grade New York City patrolman killed in the line of duty, approximately $4,400 a year. Before receiving such an award, its beneficiary would have to assign to

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[10] Perlmutter, "Funds for Victims in Rescues Urged," N.Y. Times, Oct. 11, 1965.

[11] N.Y.C. Local L. No. 1008 (1965).

the city any sums that might be recovered from the offender up to the amount of the City's award.

The New York City good samaritan measure was signed into law on December 29, 1965 by Mayor Robert Wagner as one of the last official acts of his term in office. The first applicants were Mrs. Collins and two other widows: Mrs. Charlotte Waldholz, mother of five children and expecting a sixth, whose husband had been shot to death while trying to stop a holdup at a service station; and Mrs. Nathan Dyller, whose husband had been beaten to death after he objected when a man tried to pick up his seventeen-year-old secretary as he was accompanying her to the subway. The applications were referred to the city comptroller for investigation; after that, they would be reviewed in the corporation counsel's office.[12]

In mid-October 1966, slightly more than a year after her husband had been killed, Mrs. Collins became the first beneficiary under the good samaritan statute. Her award amounted to $4,420.26 annually. Should she remarry or die, her daughter would continue to receive the same amount until her eighteenth birthday. Accompanying the recommendation for the award was the following observation of John J. Carty, the deputy controller:

> "It is a wonderful thing to know that there are still New Yorkers who are not afraid to become involved, and are willing to protect other citizens. . . . We can't bring Arthur Collins back, but we can try to show his family that we appreciate what he did." [13]

Meanwhile, Collins's assailant had been apprehended, and during the same month that Mrs. Collins received her award, the newspapers announced the disposition of his case. The man accused of killing Collins was José Antonia Saldaña, a twenty-one-year-old factory worker from the Bronx. His trial for first-degree murder had just gotten under way, and ten jurors had been selected when defendant's counsel interrupted to enter a plea of guilty to a charge of second-degree murder. The following week, Saldaña was sentenced to the mandatory minimum sentence of twenty years-to-life in prison.[14]

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[12] Merlis, "3 Widows for 'Good Samaritan' Pensions," N.Y. World Telegram & Sun, March 7, 1966.

[13] Dallos, "Samaritan Law Benefits Widow," N.Y. Times, Oct. 15, 1966.

[14] "Man Pleads Guilty to Subway Slaying of Good Samaritan," N.Y. Times, Oct. 12, 1966.

Closer examination of Saldaña's killing of Collins showed it to be an almost stereotypic good samaritan case in which fine intentions boomeranged severely. Saldaña maintained that Collins had pushed him out of the subway car, and that he could not take that insult. Saldaña had often been in trouble because of a tendency to become volatile when drinking, and he had been drinking the evening that Collins chose to intervene between him and the women he was bothering on the subway.

The good samaritan statute passed by the New York City Council was supplemented by a resolution by its vice-chairman which called upon Governor Rockefeller to study the feasibility of creating a special corporation to provide indemnification to crime victims and their survivors. When the 1965 Council sessions ended without action on the resolution, it was reintroduced on January 1, 1966 as Resolution No. 1, and thereafter adopted by the Council.

The final legislative action in regard to crime victims by the New York City Council was the introduction on February 15, 1966—the later defeat—of a general provision for compensation of crime victims showing financial need. Sponsored by Councilman Saul S. Sharison, the measure called for the awarding of funds for medical expenses and loss of earnings for persons other than peace officers suffering disabling injuries as crime victims or survivors of crime victims, if "it would appear that the victim or his immediate family may become a public charge." [15]

The slaying of Arthur Collins had direct repercussions in New York State beyond the action of the New York City Council. It added emotion and perspective to reports on victim compensation issued by the New York Republican Club and by the Correctional Association of New York.

The Victim, a report issued by the City Affairs Committee and the State Affairs Committee of the New York Young Republican Club on October 4, 1965, just five days before the Collins slaying, established a pattern that would become common

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[15] N.Y.C. Prop. Local L. No. 62 (1966); "City Payment Asked for Crime Victims," N.Y. Times, Feb. 6, 1966. For details of a good samaritan who could not be aided because the law did not cover acts occurring on private premises, see "City Unable to Pay a Samaritan Hurt in Tavern Holdup," N.Y. Times, April 21, 1967, and "Samaritan Award Is Given to Man City Could Not Help," N.Y. Times, May 2, 1967.

as commissions, agencies, law review commentators, and others began to empathize with victims of criminal acts. The report contained a recital of crime statistics, followed by some observations on the unfortunate plight of victims. It was noted, for instance: "The F.B.I. reports that in 1964 the victims of murder were 3 to 1 male and most were in their 20's and 30's. It is safe to assume that many left wives and children." [16] The possibility of civil recovery by victims from offenders was examined and dismissed with a series of remarks that would be repeated almost verbatim in scores of later reports dealing with crime-victim compensation:

> "Unfortunately, in most instances the criminal either lacks sufficient means to effect recompense or will exhaust most of his resources in defending himself against the charge arising out of the crime. Furthermore, the imprisonment flowing from the crime prevents the criminal from working and deprives the victim or his dependents of almost any remaining hope of collecting a tort judgment." [17]

The Young Republican Club called for "a compensation program to assist certain needy victims of specified crimes in meeting their basic expenses." [18] A review of the history of victim compensation was followed with the inevitable citation to the Code of Hammurabi—and of the ingredients of the compensation programs begun in New Zealand and Great Britain in 1964, and in California in 1965. These programs, despite certain "limitations," were said to "have shown the way by demonstrating that an effective compensation program is not only necessary, but also that it can be operated without excesive cost to the public." [19] The California program was criticized for its concentration on the need of the victim, and the hope was expressed—which would not be realized—that in California, need would "certainly not [be] judged by the same severe standards as are or should be applied for eligibility for welfare or relief payments." [20] The Republican Club, as would virtually all later commentators, recommended

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[16] N. Y. Young Republican Club, City Affairs Comm. and State Affairs Comm., *The Victim* 2-3 (1965).

[17] *Id.* at 3.

[18] *Id.* at 4.

[19] *Id.* at 8.

[20] *Id.* at 10.

that property losses not be included in programs of crime-victim compensation, since they were not as "disastrous as serious personal injury, if only in the sense that [they do] not destroy the ability to earn a living." [21]

As to costs, reference was made to the estimate by Robert D. Childres that the expense of a comprehensive national program of crime-victim compensation might not exceed $14 million a year.[22] This was compared to the $250 million that New York spent annually for workmen's compensation premiums, and was put alongside the expenditure of "millions for the capture, trial, care and confinement of criminals, and millions upon millions for various compensatory or welfare-type programs." [23]

The report by the Correctional Association of New York, issued in mid-December 1965, suggested that "the main thrust of [a crime-victim compensation law] should be to provide swift and adequate relief for persons who are injured in what might be termed 'impersonal' crimes as distinguished from persons who sustain injuries from violence growing out of family quarrels and the like." [24] Concern with the possibility of fraud or unjust enrichment of the offender seemed to underlie the extensive consideration of disqualification of family members from eligibility for compensation. The term "family" was defined to include "a person's spouse, children, parents, and brothers, sisters, uncles, aunts, nephews, and nieces of the whole or half blood, whether or not in any case legitimatized by legal marriage." [25]

Otherwise, the recommendations were generally similar to approaches which would find their way into statutes that emerged in later years. They called for reporting of the offense to the police within thirty days. Apprehension or conviction of the defendant would not be relevant to compensation claims. Financial need was not to be taken into account in making awards, and the schedule of compensation was to be similar to that under the

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[21] *Id.* at 12.

[22] Childres, "Compensation for Criminally Inflicted Personal Injury," 39 N.Y.U.L. Rev. 444 (1964).

[23] N.Y. Young Republican Club, note 16 *supra*, at 17-18.

[24] Correctional Ass'n N.Y., *Report of Ad Hoc Committee on Victim Compensation* 4 (1965).

[25] *Id.* at 2.

state's workmen's compensation law (an approach that would be used only in Maryland and New Jersey, among the states which later adopted programs). A "quasi-judicial board" would administer the program, and appeals from its ruling would be allowable to the appellate division of New York's Supreme Court, but only as to matters of law.

The Legislative Drive

On January 6, the opening day of the 1966 session of the New York State Legislature, there were on hand 1,898 prefiled measures, about half of them perennials which had failed of passage in previous sessions. Prefiling in New York, which had begun November 15, permits a bill to be printed and thereby supposedly be ready for action early in the legislative session.

Bill No. 1 in each house of the legislature was a compensation measure, a provision again inspired by the death of Arthur Collins. Sponsor of the bill in the Assembly was Moses M. Weinstein, from Queens, and in the Senate, William T. Conklin, from Brooklyn. The proposed law was a skeletal affair, with as many questions unanswered as answered regarding the scope and operation of the program it suggested. Indeed, in a letter written on February 9, Weinstein himself noted: "I am not entirely satisfied with the bill and I am presently studying the matter for the purpose of making many amendments." [26]

Under the bill, funds were to be furnished to eligible crime victims or their survivors by local public welfare districts, after the districts had established "the amount and the nature of the aid and the manner of providing it" with "due regard to the conditions existing in each case." Appeals from the acts of the local agencies could be made to the state's Department of Public Welfare, which, on its own motion, might also decide to review any local decision. At quarterly intervals, the local districts were to submit to the state for reimbursement the accounts of their expenditures under the crime-victim measure. The bill also contained an interesting reparation provision—one of a nature that has often been discussed in the literature on victim compensation, but which has not as yet been included in any enacted program:

"When a defendant has been convicted of a crime of violence, the judge

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[26] Letter of Moses M. Weinstein to Gilbert Geis, Feb. 9, 1966.

> or justice holding the court at which the conviction takes place shall examine the defendant's economic conditions, and unless it finds such action would cause the family of the defendant to be dependent on public assistance shall, in addition to the criminal penalties which may be imposed, order the defendant to pay the victim or his family, if the victim be dead, a sum of money commensurate with the crime involved." [27]

The bill indicated that such reparation rulings could be enforced by court judgments against the offender.

Finally, the sum of $500,000 was to be appropriated by the legislature to finance the new program.

Several other groups were taking steps preliminary to legislative action at the time that Moses Weinstein was placing his measure before the State Assembly. In December 1965, for instance, a Joint Legislative Committee on Crime and Control of Firearms held a public hearing on compensation to crime victims. A chain of witnesses endorsed the idea of compensation in principle, though there was a wide variety of ideas regarding the precise manner in which compensation programs ought to be implemented. Compensating for property losses was universally rejected as "impractical and expensive," and there was also general condemnation of the California approach which tied victim claims to eligibility for welfare relief. A representative of the New York State Trial Lawyers Association, with patent self-interest suggested that victim-compensation claims be subject to arbitration or to jury trials and that they not be awarded in terms of a preestablished schedule, as is customary in workmen's compensation. Finally, adding what a newspaper called "a poignant note" to the proceedings, Arthur Collin's widow testified to the desperate emotional and financial situation in which she found herself following the death of her husband.[28]

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[27] N.Y. Assem. Bill 1, § 485-c (Jan. 15, 1966). An interesting parallel appears in the recent report of the National Commission on Reform of Federal Criminal Laws: "The court is also prohibited from setting a fine which will so deplete a defendant's resources that he cannot compensate the victim of his crime. . . ." Nat'l Comm'n on Reform of Fed. Crim. Laws, "A Proposed New Federal Criminal Code, Final Report, Comment on Sec. 3302," in U.S. Senate, Comm. on the Judiciary, Subcomm. on Criminal Laws and Procedures, "Reform of the Federal Criminal Laws," 92d Cong., 1st Sess. 448 (1971).

[28] "Crime Victims: Witnesses at Legislative Inquiry Unanimous for Compensating Injured," N.Y.L.J., Dec. 3, 1965.

The Rockefeller Committee

Dominating activity in regard to victim compensation in New York State were the efforts of Governor Rockefeller, who less than two weeks following the death of Arthur Collins, in a widely-circulated statement, endorsed the idea that the state should give financial aid to victims of violent crimes and their families. The governor appointed a three-man committee headed by Attorney General Louis L. Lefkowitz, and including the Governor's Counsel, Robert R. Douglass, and Presiding Judge John P. Gaultier of the Court of Claims, to study the subject, with the instruction that it have recommendations ready for consideration by the 1966 Legislature.[29]

"My committee will search out ways for society to extend a helping hand to individuals who suffer as the Collins family is suffering," the governor noted in his announcement on the formation of the committee.[30] Spokesmen for the governor's office also spelled out for newspaper reporters the kinds of issues that would have to be resolved before legislation could be adopted. Interestingly, one point stressed was whether riot victims should be eligible to apply for aid. The ensuing legislation is silent on this matter, to the considerable present unease of the New York Crime Victims Compensation Board chairman, who remains apprehensive that his program will be inundated with applications for compensation in the event of a major riot in New York State.[31]

The Governor's committee held three public hearings, on January 3 and 14, 1966 in New York City, and on January 26 in Albany. The New York City hearing was first addressed by Governor Rockefeller, who repeated his earlier endorsement of the general idea of crime-victim compensation. He observed that to date only Great Britain and New Zealand abroad and California in the United States, with a "modest" program, had legislated in this area. The second speaker was Transit Commissioner John J. Gilhooley who, predictably enough, recited the details of the Collins killing to emphasize the need for a program of the type

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[29] "Rockefeller Seeks State Fund to Aid Victims of Crime," N.Y. Times, Oct. 24, 1965.

[30] *Id.*

[31] Sutton, "Compensation of Victims of Crime in New York State," Report to Battelle, March 1, 1972, Sec. V, p. 14.

being considered. "The important thing at this time, I believe," he said, "is to get started on some program of compensation. Experience will indicate whether improvement or expansions may be desirable or necessary." [32]

Witnesses who followed were questioned about, among other things, the kinds of offenses that ought to be covered by the law, the feasibility of maximum and minimum payments, the kinds of losses that should be covered, the matter of prompt reporting to the police, the inclusion or exclusion of pain and suffering from awards, lump-sum versus periodic payments, emergency awards, and issues relating to hearing and appeal procedures.

The first voice opposing victim compensation to be heard by the committtee was that of Richard Kuh, an articulate former assistant district attorney in Manhattan. Kuh calculated that payments of, say, $250 to each of the 25,000 persons in the state who had entered complaints as victims of crimes of violence during the past year would amount to over $6 million. "There are," he maintained, "more important calls on that six million than a nice appealing program of compensating victims of crime." [33] Among such calls were those asking for more effective measures to reduce narcotics addiction, add police manpower, and rehabilitate criminals. All told, said Kuh, "where we have not got a cornucopia, it is necessary to weigh it against other things in the law enforcement field." [34] Then Kuh turned to the philosophical justification for singling out the crime victim for special attention:

> "[W]hat about victims of non-negligent accidents, and what about persons who may be killed by lightning, flood, or today, when we have no transportation, people who develop heart ailments and so forth by the strains and so on involved in coming into a city with no transportation?" [35]

Kuh also feared that allowing lawyers into the proceedings would result in their siphoning off as much as a third of the amounts recovered by victims. He believed that probation department personnel might be employed to investigate and make recommenda-

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[32] New York, "Meeting of the Governor's Comm. on the Compensation of Victims of Violent Crime" 9-10 (Jan. 3, 1966).

[33] *Id.* at 33.

[34] *Id.* at 34.

[35] *Id.* New York was at that moment in the throes of a strike by transportation workers.

tions on crime-victim-compensation claims. "I suggest to you," Kuh observed, "that the probation reports are adequate for the judges of our courts to impose life sentences . . . and they should be adequate to form the basis for giving out some funds." [36] Kuh also entered into a more general discussion on the implications of being a crime victim. Based on more than a dozen years in the district attorney's office, serving four of those years as chief of a bureau that handled some 40,000 litigated matters annually, Kuh thought that he knew what

> "Is nearest and dearest to the heart of the victim of crime, what that victim wants most, and I guess it is not money. . . .
>
> "I suggest what it is really is equal standing in the criminal courts to the standing of the defendant in a criminal case, and by that I mean something very simple, and that is the right of the complainant, when it comes to such things as adjournments, appearances in court, to be entitled to some consideration.
>
> "I have some complainants scolded and harassed by judges, and I will say by prosecutors, including myself, when they have said to us, 'I will not come down again, I have been here twelve times and every time I am here there is some reason for an adjournment, and I cannot miss any more days of work. I just will not come again.'
>
> "And I as a prosecutor have had—and I might say it is the most hateful thing I have done in my years of prosecution—I have had the problem of telling these complainants we have no alternative but to hold you in contempt if you don't come again." [37]

Other legally qualified witnesses offered hypothetical instances which might serve to confound the most astute kinds of legislative draftsmanship. Thus, on the question of defining the crimes to be covered by the Act, Richard Bartlett, chairman of the New York Commission on Revision of the Penal Law and Criminal Code, offered the following situation for consideration:

> "A purse snatcher . . . turns and runs down the street and knocks someone over. Starting out with a robbery, of course, this is serious, but how about the shoplifter who picks something up from the shelf and then bolts and hits some old lady in the store instead of on the street—or indeed on the street." [38]

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[36] *Id.* at 36.

[37] *Id.* at 37-38.

[38] *Id.* at 78.

Bartlett also thought that consideration should be given to precise definition of the jurisdictional area covered by the proposed law. Should a person injured by a crime of violence in a post office, for instance, be allowed to recover under provisions of the New York law?

Previous witnesses had suggested, rather hopefully, that a crime-victim-compensation law might encourage more willing cooperation between citizens and law-enforcement agencies. Bartlett had a contrary proposition to offer—that the law might be detrimental by "encouraging people recklessly to inject themselves into situations when a call to a police officer would be much wiser and indeed in the better interests of good law enforcement." [39]

At the second hearing in New York, on January 14, 1966, the witness who received the most attention was Gerhard O.W. Mueller, a professor of law at New York University. He suggested that the proposed legislation might promote crime by, for example, reducing a criminal's "inner hurdle" against victimizing someone by allowing him to rationalize that "nobody got hurt." [40] Mueller analogized to crimes against property, in which robbers are reported to have considerably less reluctance to hold up finance companies and large insured corporations than to rob private citizens. Mueller also stressed that the psychological relationship between the criminal and his victim is often too close and intricate for a statute to discriminate categorically between one and the other. "The vast majority of homicides and rapes are victim-precipitated," Mueller told the committee, and the homicide victim's role in bringing death can range from an outright dare to a subliminal invitation.[41] Quoting figures from a study by Marvin E. Wolfgang of the University of Pennsylvania,[42] Mueller told the committee that in more than 70 percent of homicides, the parties are known to each other as friends, lovers, or man and wife. In a majority of rape cases, Mueller said, the victim and the rapist had previously dated. Homicides involving victim precipitation, Mueller maintained, are

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[39] *Id.* at 86-87.

[40] New York, "Meeting of the Governor's Comm. on the Compensation of Victims of Violent Crime," 141 (Jan. 14, 1966). See also Tolchin, "Crime Rise Linked to Indemnity Bill," N.Y. Times, Jan. 15, 1966.

[41] *Id.* at 145.

[42] Wolfgang, *Patterns in Criminal Homicide* (1958).

tantamount to suicide. He suggested that state compensation to a victim's family might add inducement to homicide, by subtly encouraging the victim to take less care.

Mueller also thought the committee should look more closely at an existing provision of the New York Penal Code—Section 512b, which made the perpetrator of a felony a creditor to his victim.[43] "This section has never been used," he told the committee. "There is no annotation of this section. I think it is a tremendously important section." [44]

Mueller's argument that a compensation program might encourage crimes of violence by undercutting the criminal's sympathy for his victim because the victim's compensation would make his loss seem less dire came in for criticism. Arthur Cornelius, Jr., superintendent of the State Police, thought the hypothesis farfetched:

> "I have heard the observation that a compensatory plan might have a worsening effect on the crime picture in that the criminally oriented would be encouraged to acts of violence because of the knowledge that victims would not suffer financially. I reject this view. I think it attributes qualities to criminals they do not possess. If the criminal were really sensitive about the effects of his activity, it is impossible he would be a criminal." [45]

The superintendent's reasoning was not too different from that of the distinguished English jurist Rupert Cross, who had considered the same problem when reviewing the English program of victim compensation and reached the following conclusion:

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[43] Section 5126 provided that

> "[A] person injured by the commission of a felony, for which the offender is sentenced to imprisonment in a state prison, is deemed the creditor of the offender, and of his estate after his death, within the provisions of the statutes relating thereto.
>
> "The damages sustained by the person injured by the felonious act may be ascertained in an action brought for that purpose by him against the trustees of the estate of the offender, appointed under the provisions of the statutes, or the executor or administrator of the offender's estate."

In the version of the New York Penal Law effected in 1967, this section was transformed into the Civil Rights Law.

[44] N.Y., "Meeting of the Governor's Comm. . . .," note 40 *supra*, at 147.

[45] New York, "In the matter of the Public Hearing Conducted by the Comm. Appointed by Governor Rockefeller to Prepare a Plan for Compensating the Victims of Crime" 24 (Jan. 24, 1966).

> "The callousness of many criminals is notorious. Might it not become even greater, if they knew that their victims could get compensation from the state? This is not the kind of thing that can easily be proved or disproved by evidence, and I am relying on nothing more than intuition when I say that I doubt whether many criminals pay attention to the extent of the injury they inflict, or the misery they are likely to cause, when committing a crime of violence." [46]

Having heard twenty-eight witnesses, the committee finally adjourned its public hearings and set to work on drafting legislation. The closing statement of Attorney General Lefkowitz summarized its attitude:

> "I know we will not have a perfect bill, but one assurance that we will give you, whatever we propose will come after due consideration, having in mind the views expressed at the three hearings [as well as] what is going on in other jurisdictions." [47]

The Proposed Legislation

The bill designed by the governor's committee was presented to the legislature on April 20, 1966.[48] It called for the creation of a three-man Crime Victims Compensation Board. Members of the board would be lawyers with at least ten years' experience. They were to be appointed by the governor for seven-year terms, and were to work at the job full-time. The board could award compensation to eligible applicants equal to the costs of unreimbursed medical, hospital, and other services necessitated by crime victimization, plus the loss of earnings or support. The maximum amount possible for any award for loss of earnings and/or support was set at $15,000. Only crimes committed in the state on or after October 1, 1966 would be eligible for board consideration. Claims were to be decided by a single member of the board (a procedure adopted from the British program). Consideration of a claim would be postponed if the district attorney in the county where

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[46] Cross, "Compensating Visting of Violence," *Listener* 49, 816 (1963).

[47] N.Y., "In the Matter of the Public Hearing . . .," note 45 *supra*, at 32.

[48] Schanberg, "State May Assist Victims of Crime," N.Y. Times, April 21, 1966; Madden, "Bill Would Help Victims of Crime," N.Y. Times, April 22, 1966; Assem. Bill 5335 and Sen. Bill. 6124: "An Act to Amend the Executive Law in Relation to the Creation of the Crime Victims Compensation Board in the Executive Department, Prescribing the Powers and Duties Thereof and Making an Appropriation Therefor."

the prosecution of the alleged crime was pending requested a deferment until the prosecution had been completed. The claimant as well as another member of the board could obtain a review of the award by the full board, which could dismiss the appeal or modify the award. There was to be no judicial review for claimants, although the attorney general or controller could ask the appellate division of the courts to examine any award believed to be improper or excessive.

Claims had to be filed within ninety days after the criminal event, although the board might extend the period for good cause. A minimum loss of $100 or two weeks' earnings or support was necessary to qualify for assistance. Members of the family of the person criminally responsible for the crime upon which the claim was based could not qualify for assistance. Moneys might be awarded regardless of whether the alleged criminal was apprehended, prosecuted, or convicted, or whether he was found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.

The bill called for an appropriation of $500,000 for the first fiscal year of the board's work, the same amount that had been requested by Assemblyman Weinstein in his prefiled measure.

By far the most controversial section of the measure was Section 631.6, establishing a "need" test by means of which to judge awards. The section read:

> "If the board or board member, as the case may be, finds that the claimant will not *suffer serious financial hardship,* as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this article to meet such loss of earnings, support or out-of-pocket expenses, the board or board member shall deny an award. In determining such serious financial hardship, the board or board member shall consider all of the financial resources of the claimant. The board shall establish specific standards by rule for determining such serious financial hardship." [Emphasis added.]

The inclusion of this provision was clearly an attempt to keep the costs of the new program below what they would be were there no requirement that "serious financial hardship" be demonstrated by victims to qualify for assistance. The provision was deemed necessary to secure passage of the law, despite the almost universal opposition to such a restriction expressed during the hearings of the governor's committee. The rationale for inclusion of the

"serious financial hardship" provision was explained by the board chairman to a conference in 1970 as a reaction by the legislators to costs associated with Medicaid:

> "[O]ur legislature had already been badly bitten by Medicaid. They were told one thing and when it got into existence, it blossomed. They treated this [victim-compensation] program as another one of those runaways, and that's why they actually put the serious financial hardship in it." [49]

Another version of the manner in which the "serious financial hardship" provision found its way into the New York law was provided by Robert Childres in a 1972 letter to Senator McClellan, chairman of the U.S. Senate Subcommittee on Criminal Laws and Procedures, concerning proposed federal legislation on victim compensation.[50] Childres expressed his feelings about the inclusion of the need provision in the New York law, and proposed federal law, as well as his objections to the categoric limitation on recovery by members of the offender's family.

> "[M]y disappointments with your bill [S. 2994] are old ones. When I was helping draft the New York bill we felt confident that your Section 464(a) and (d) would not be amended to your present form.[51] After the [New York] bill had passed, we were mortified to discover that, at the last minute and unbeknownst apparently to anybody, Rockefeller had inserted the need test and the family exclusion into a substitute bill.[52] The

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[49] Stanley L. Van Rensselaer at Second International Conference on the Compensation of the Innocent Victims of Violent Crime, Baltimore, Md., May 27-29, 1970, *Proceedings* p. 33.

[50] Letter from Robert Childres to John L. McClellan, Jan. 3, 1972, in U.S. Senate, Comm. on the Judiciary, Subcomm. on Criminal Laws and Procedures, "Victims of Crime," 92d Cong., 1st Sess. 1005 (1972).

[51] Section 464(a) reads: "No order for payment shall be made under this part unless the Board finds that the applicant will suffer undue financial hardship from pecuniary loss incurred as a result of the injury or death of the victim if the order for payment of compensation is not made. In determining undue financial hardship for the purposes of this subsection, the Board shall consider all of the financial resources of the applicant. The Board shall establish standards by rule for determining such undue financial hardship."

Section 464(d) reads: "The criminal or an accomplice of a criminal, a member of the family of the criminal, a person living in the household of the criminal, or a person maintaining sexual relations with the criminal shall not be eligible to receive compensation with respect to a crime committed by the criminal."

[52] The need provision appears in all bills presented to the legislature by Rockefeller of which we have secured copies. We asked Childres about this, and he wrote: "My recollection is clear but I do not remember the mechanics of why we thought until after the legislation had been passed there would be no needs test." Letter from Robert Childres to Gilbert Geis, July 18, 1972.

only explanation to come from his office was that these restrictions were fiscally necessary. But that was nonsense then and still is. Experience has shown in all the programs without fail that relatively little money is involved from the government's point of view, even if in individual cases the money means an enormous amount to the recipients. . . .

"First, the need test. No one has ever suggested a reason why 'society's moral obligation in this area,' as you put it on introducing S. 2994, runs only to the poor. It has always seemed to me that society's obligation to protect the citizenry, and to pay attention to those citizens whom it fails, runs with an even hand to the poor, middle and rich alike.

"Moreover, this program is an excellent vehicle for showing the middle class in this country that government cares for them, too. I strongly urge you to eliminate Section 464(a).

"The family exclusion question is best framed, I think, by asking whether anything beyond Section 457(c)'s limitation is needed.[53] Those family members who provoke, or are in part responsible, for the violence should of course be dealt with as Section 457(c) provides. But I would suggest no more is needed. If a father shoots and disables a small child, surely that child is as deserving as a child who lives next door. . . ." [54]

In an earlier article, Childres had cogently set forth his views on the vital importance of not regarding victim compensation as charity and of keeping it separate from welfare restrictions.[55] In a sentence that was to be widely quoted in later discussions of the issue, Childres noted: "[W]elfare programs are analagous only in that they deal with destitution, which compensation is intended to prevent. Welfare and compensation are unrelated in their rationale, their victims, and the social problems they seek to alleviate." [56] Childres elaborated on the matter in the following form:

"Debilitating poverty is a blot on the national character of any prosperous nation. For most poverty, however, there is no admitted causal relationship involving the government. For destitution threatened by criminal

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[53] Section 457(c) reads: "In determining whether to order a payment under this section, the Board may consider any circumstances it determines to be relevant and Board shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused his injury or death and the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim."

[54] Childres letter, note 50 *supra*, at 1005.

[55] Childres, note 22 *supra*, at 462.

[56] *Id.*

injury to the person there unquestionably is such a relationship. Victims of crime ought not be required to divest themselves of all resources before qualifying for compensation. Nor should they receive payments at a level kept low in part to induce people to return to the work force." [57]

Though the "serious financial hardship" subsection had been included in the New York law, it by no means guaranteed prompt passage of the measure. For the first time since 1938, there was a split in the party majorities in the two New York legislative chambers, with the Democrats controlling the Assembly and the Republicans in command in the Senate. In the latter body, Majority Leader Earl W. Brydges, of Niagara Falls, on the day following the introduction of the governor's bill, described crime-victim compensation as an idea too new and too complex to pass "right now in this much of a hurry," although he promised to study the bill carefully. Brydges wanted to create a new joint legislative committee to make an exhaustive study of the entire issue of victim compensation and to have the committee report back to the legislature at the following session.[58]

Sometime after April 1966, Rockefeller permitted Majority Leader Weinstein to assume sponsorship of the measure put together by his committee[59] (in the Senate, the bill was presented as a product of the Committee on Rules), and after this, the sailing became much smoother. Interviewed in 1972, Weinstein recalled how the bill was handled:

> "I'm being very frank about it. . . . I enjoyed excellent rapport with both sides of the aisle, Republicans and Democrats, and I don't think that very many guys were anxious to tangle with me on that occasion." [60]

There was little overt opposition to the bill, Weinstein remembers. "Everybody was appalled by the crime that had been committed, the Collins thing and all that. It was that kind of thing—like motherhood, and everybody was in favor of it. We got one or two of conservative ilk that didn't think we should spend the money, but I had had that constantly." [61] Also, "There must have

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[57] *Id.*

[58] Madden, "Victims of Crime to Get State Aid," N.Y. Times, Aug. 2, 1966.

[59] Schanberg, note 48 *supra.*

[60] Sutton, note 31 *supra*, Sec. VII, pp. 8-9.

[61] *Id.* at 6.

been 50 guys who wanted to co-sponsor the bill. They jump on it, but when they go back to their community, they don't tell them they just co-sponsored [the] bill. They tell them they introduced the bill. . . . That's what they do." [62]

The opposition was made more quiescent by keeping the maximum award down to $15,000. Weinstein explained the reason for this limitation:

> "There's always a question of money in the minds of many people in the legislature, and I felt that if I immediately said to make it 50 or 100 [thousand] you might find a lot of opposition. So I talked what I consider to be a rather nominal sum which would take care of that person who was in the middle income class or in the poor class, more of whom might be on the street than the man who is driving a limousine or a Rolls Royce—and that met with approval." [63]

Weinstein was willing to compromise in regard to the expenditure of $500,000 for the board's work, and here the power inherent in his office was brought into play:

> "The problem we ran into was the fact that for the initial appropriation we wanted $500,000 for the bill. The Republican administration and the Senate wanted to kill it. . . . [T]hey tried to delete it or cut it down or postpone, for a year or two, its operation. Of course I was then majority leader of the Assembly. So I said: 'Well, if you kill this bill then your bills that come into the Assembly will receive, I'm sure, fair treatment: They'll all die.' So the bill was passed. . . ." [64]

On May 18, 1966, the bill was passed by the Assembly, 142-to-9. The Senate ballot came on the final day of the session, with the clocks stopped to allow the legislature to pretend it was acting within the statutory time limit set for it.[65] The Senate vote was 44-to-17. In conference committee, the only alteration was to change the date of eligibility from October 1966, to March 1967. In his New York office, a month later—on August 1, 1966—Governor Rockefeller signed the measure into law, describing it as a "revolutionary concept." [66] Assemblyman Weinstein, noting the

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[62] *Id.* at 10-11.

[63] *Id.* at 8.

[64] *Id.* at 4-5.

[65] "Clocks Stopped to Pass Key Bills," N.Y. Times, July 6, 1966.

[66] Madden, note 58 *supra*; N.Y. Exec. L. § 620.

governor's approval in his own press release (in which Weinstein pointed out that he had "introduced" the bill), recited some of the measure's provisions and observed that he had sent copies to every state legislature and to each bar association in New York State. He used a theme that would become common in praise of victim compensation, one maintaining that it served to balance more fairly the rights of the victim of criminal acts with the rights of the accused:

> "For the first time the State recognized that it has a responsibility to be as interested in what happens to the victim of crime as to the criminal. It is all too common to see and hear individuals and groups rally to the defense of the rights of accused criminals. It is long overdue that the State becomes just as indignant over the victims of the crimes." [67]

In signing the bill, Governor Rockefeller filed with it a memorandum, noting that the measure "enacted upon my recommendation . . . was developed by the special committee which I appointed . . . to develop legislation to provide compensation for the innocent victim of crime, with special reference to the tragic case of Arthur F. Collins. . . ." [68]

All told, the New York measure was clearly a landmark effort. The draftsmanship was skillful and most of the provisions would stand the test of time in terms of their clarity and utility. A number of the bill's provisions were arguable, but there was no question that they had been debated, their merits and demerits considered with some care, in terms of what seemed reasonable and possible. Later, the New York system would provide guidelines for other state programs, and the experience in New York State would provide empirical data for adjudicating ideological questions related to victim compensation.

Certainly, the existence of programs in New Zealand and Great Britain had provided guidance for the establishment of the compensation scheme in New York, and the California program had served as an object lesson of what was at all costs to be avoided. Nonetheless, the New York achievement was a remarkable piece of speedy administrative and legislative work, begun as an idea in October 1965 and signed into law less than one year later.

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[67] Press Release, Moses M. Weinstein, Albany, N.Y., Aug. 1, 1966.

[68] N.Y., Executive Chambers, Memorandum Filed with Assem. Bill Intro. No. 5335 (Aug. 1, 1966).

There was irony in the fact, though, that the family whose predicament had so precipitously set everything in motion was not served by the product that emerged. Mrs. Collins and her daughter continue to receive the $4,400 given them each year by the New York City Council. Under the state provisions, with the $15,000 maximum, her award would not have lasted four years.

Legislative Changes

Two summary observations may be entered bearing on the legislative history of the crime-victim-compensation measure since its enactment:

(1) The foresight and skill of the drafters was of a quality high enough to ensure that the original bill as written could be administered expeditiously, and that it rather well articulated the ideological preferences of the lawmakers.

(2) As time passes and the law becomes better known, it offers a tempting target for reform and debate. Support for the second proposition is supplied by the ever-growing number of bills which seek to amend the victim-compensation law.

Through 1972, there were three substantive changes and one technical change made in the original New York enactment.[69] The technical change concerned the renumbering of a section referred to in the act, to make the reference congruent with another section. The first substantive change involved the insertion in 1968 of "parent" between "spouse" and "child" in the roster of survivors of a crime victim who might be eligible to receive an award. The legislative intent for this change was explained in the following terms:

> "Originally when the law was passed a parent of a victim who died was not an eligible claimant. The Board thus was unable to even pay for the funeral bill. In 1968 the Board succeeded in having the Legislature amend the law so that the parent is now eligible. This opens up another avenue for an award to the parent in addition to the funeral bill. Prior to the change, the parent might qualify for an award for support furnished by the child only if the parent could qualify as a person dependent for his principal support upon the victim. With the amendment the parent

[69] For statute and amendments, see N.Y. Exec. L. § 620.

now would be entitled to an award even if the support were only partial." [70]

The second change, made in 1970, made explicit the fact that victims could not receive "double recovery," even if the protection they had derived from private sources.[71] It added the following item to the list of victim incomes which would result in their amounts being deducted from the award total: "[A]ny contract of insurance wherein the claimant is the insured or beneficiary." Prior to this amendment, insurance payments were deducted from the amount of an award only where insurance was part of a program mandated by law, such as workmen's compensation. This new provision was diametric to the philosophy which had come to underlie several foreign victim-compensation programs. In New Zealand, for instance, the original compensation measure had called for insurance payments to be subtracted from grants, but this provision was stricken in committee when the government came to align itself with the view that "a man should not be penalized for having the foresight to insure himself." [72]

The third change, in 1972, was to allow claims to be filed on behalf of a minor or incompetent by a relative, committee, or attorney, and provided payment to such persons. Prior to this amendment, there was no provision for a claim on behalf of an incompetent. The new payment provisions also clarified the manner in which payments could be made on behalf of minors or incompetents, and how the custody of such moneys should be monitored.

During the 1970 election campaign, Governor Rockefeller returned to the subject of crime victims. In a speech on October 16 before the Polish-American Committee of Greater New York, for instance, he again recounted the situation of Arthur Collins's family, noting: "I was shocked that such victims of crime be so ignored by society. I decided to do something about it right then." The governor told his audience that he was "proud" of the law

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[70] Nissman, "Compensation for Victims of Crime," 32 Queens B. Bull. 5, at 7 (1969).

[71] This change did not affect the board's rule permitting certain specified amounts of life insurance to be excluded from consideration.

[72] Hanan, Minister of Justice, in New Zealand, Parliamentary Debates 2633 (Oct. 22, 1963).

that had subsequently been enacted, but that he now wanted to press for expansion of its coverage. In particular, he wanted the board to "give special consideration and expanded benefits to people who provide essential public service and expose themselves to high risks of criminal attack." Among other groups, the governor had in mind taxicab drivers, eight of whom had already been killed during the year, compared to three for the entire previous year.[73]

There is no record that the governor's ideas went very far beyond this expression, but during the legislative session he introduced a bill—which was defeated—to permit board-designated employees to make initial decisions on compensation claims, subject to the final approval of the board chairman. The present full-time board was to be changed to a review body, and its pay would be determined on a per-diem basis rather than the present arrangement of flat salaries. The governor believed that the board's work had so increased that such administrative rearrangements were imperative.[74]

A number of measures seeking to amend the victim-compensation law were introduced in the 1971 legislative session. Assemblyman Stavisky proposed legislation calling for the establishment of rewards for "information leading to the arrest and conviction of persons guilty of arson and criminal mischief in or about buildings used as schools and places of religious worship," with the stipulation that "the identity of the claimant for a reward shall be held in absolute confidence." The file copy of the bill we have contains a handwritten note across the top of the front page: "Killed: Too broad, constitutional questions on protection of identity."[75] Three other bills (all of which also died, in part because of the opposition of the Crime Victims Compensation Board) were (1) a measure of Assemblyman Mercorella, asking that victims be compensated for pain and suffering;[76] (2) a measure by Assemblyman Miller, asking that awards be made for damages

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[73] Rockefeller, N.A., "Excerpt of Remarks Prepared for Delivery at the Polish-American Democratic Committee of Greater New York Meeting" (Oct. 16, 1970).

[74] "Measure Would Revamp Crime Victims Board," Schenectady Gazette, Feb. 24, 1970.

[75] N.Y. Assem. Bill 1841 (Jan. 13, 1971).

[76] N.Y. Assem. Bill 1696 (Jan. 13, 1971).

to houses of religious worship and their contents by acts of vandalism, bombing, or arson[77] (an idea that raised direct constitutional issues concerned with the gift of public moneys); and (3) a measure asking that the compensation act be extended to include "damages to, or loss of, personal property as a direct result of crime." [78]

Two other bills went in diametrically opposite directions in requesting basic overhaul of the compensation program.[79] State Senator Samuel L. Greenberg, a Democrat, asked for the elimination of the $15,000 ceiling and the striking of the "serious financial hardship" provision. Assemblyman James T. McFarland, an Erie County Republican, took the opposite tack. He wanted to reduce the maximum permissible award from $15,000 to $10,000, and to bar anyone from making a claim unless he had incurred a minimum out-of-pocket loss of $400 for medical expenses (instead of the current $100) or had lost at least four continuous weeks of earnings or support (instead of the present two weeks). McFarland also proposed that the rate of payment be limited to $75 a week instead of the existing minimum of $100, and that payments for medical treatment, which were unlimited, be reimbursed only for 80 percent of the cost.

Greenberg supported his proposal with the charge that the board had been guilty of a "niggling bureaucratic interpretation of the law." He claimed that the "inflexible maximum award limit" had distorted the original intention of the compensation program. He leveled a general charge that the board had forced "unnecessary suffering on the aged, the sick, the victimized and widows and orphans because of its overly strict reading of the law and its failure to seek remedial legislation."

McFarland, on the other hand, praised the concept of crime-victim compensation, but then insisted that it was essential for the state to restrict its expenditures if it intended to carry on its proper business without increasing taxes. Compensation payments, he believed, were too generous; he thought that many crime victims

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[77] N.Y. Assem. Bill 1293 (Jan. 6, 1971).

[78] N.Y. Assem. Bill 1221 (Jan. 6, 1971).

[79] N.Y. Assem. Bill 4978 (Feb. 16, 1971); N.Y. Sen. Bill. 3308-A (Feb. 8, 1971).

would not want to go back to work if they were given "a lot of money." [80]

Neither the Greenberg nor the McFarland measure made headway in the legislature, but both indicated the likelihood that increased attention was going to be paid to the philosophy and the operation of the compensation program once its existence became better known and once its cost made something more than a negligible impact on the total state budget.

The New York Board at Work

The experience in New York with the operation of a program providing compensation to victims of violent crime is the most extensive in the United States in terms of the number of claims dealt with, the amount of money involved, and the administrative issues confronted. In accord with statutory requirements, the board annually publishes a review of its work for the period from March 1 through the last day of February in the following year. The reports—four of them had appeared in print by mid-1972—tend to offer a brief overview of the statistical details of the board's operation (with a notable omission of any detailed consideration of operating costs) and to provide ongoing comparisons of the kinds of decisions made and the number of cases handled. There is inevitably a paragraph or more devoted to what the board regards as the most difficult problem of defining satisfactorily the matter of "serious financial hardship." This subject is clearly a running sore. In the more recent reports, however, there have emerged as well expressions of satisfaction on the part of the board with its ability to assist individuals who later communicate their gratitude for such help.

There generally are also passing references to the progress of legislation throughout the world on victim compensation, on internal personnel changes in board membership, and on procedural matters, such as problems associated with dealing with Blue Cross and with physicians and hospitals. Problems related to adequate staff resources to expedite the processing of claims also seem to be of continuing concern.

Until the procedure was eliminated in 1970 because of bud-

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[80] Ronan, "Bills Widening and Restricting Aid for Crime Victims Proposed," N.Y. Times, Feb. 21, 1971.

getary conditions, each report ended with a short and valuable summary of each case dealt with by the board during the year, indicating some facts about the claimant, the nature of the alleged offense, the amount of loss, and the board's decision, with a general indication of the reason for the decision.

The annual reports provide the beginning of insight into the way the board operates and how it views its performance. However, the case studies themselves are far too skeletal for more than summary generalizations, especially since there is a considerable amount of initial screening of cases which appear to be patently ineligible for assistance, and it is not unlikely that the way the screening is done has varied somewhat from year to year. To capture additional flavor of the board's operation, we observed it in action, interviewed a number of successful and unsuccessful applicants, and talked at some length with field investigators and board members. Information from these sources is intermingled with the official materials as well as with observations by writers who have published materials on different facets of the board's activities.

Membership

The first step in setting the newly legislated Crime Victims Compensation Board to work involved the appointment of three commissioners. To head the board, Governor Rockefeller selected Stanley L. Van Rensselaer of Saratoga Springs. Van Rensselaer, member of a family with a distinguished background in the history of New York, had served for several terms in the State Assembly and for a brief time earlier had been an agent with the Federal Bureau of Investigation. His salary in 1972 was $34,221; his fellow board members were paid $32,635. The other initial appointees were Max L. Nissman of Queens and Nathaniel L. Kahn of New York City. After Kahn died on October 22, 1969, he was replaced by P. Vincent Landi of New York City. Nissman is an attorney with a record of private practice and very substantial experience as a prosecutor and supervisor of prosecutors in New York City. Landi, also an attorney, came to the board from seven years as a referee of the Workmen's Compensation Board, and had substantial legal and political experience prior to that service; in 1950, he had been a candidate for the United States Congress. Kahn had been an attorney specializing in workmen's compensation and negligence work for many years.

The board's executive secretary is Claire A. Canning, a woman long active in state politics.

Rules of the Board

Among the legislative requirements was the mandate that the board officially established a set of working rules.[81] In large measure, those rules promulgated by the board explicated the provisions of the statute, generally in the same language. Among the interpretative and new material written into the rules were the following important considerations:

(1) The claimant shall have the burden of proof.[82]
(2) The board member hearing the claim could direct the applicant to have a medical examination by a doctor chosen by the board.[83]
(3) Hearings were to be open, except where (a) prosecution of the alleged perpetrator was pending; (b) the offense was sexual; (c) the welfare and interest of the victim or his dependents might be adversely affected; (d) the interest of public morality were concerned; or (e) the prosecution had resulted in an acquittal or a dismissal on technical grounds.[84]

No mention had been made in the legislation regarding the role of attorneys in board procedures. In its rules, the board recognized that claimants had the right to be represented. Attorney fees were to be set by the board member who ruled on the case. The fee guideline was this: "Whenever an award is made to a claimant who is represented by an attorney and a fee is requested, the Board member shall approve a fee commensurate with the services rendered and having due regard for the financial status of the claimant. In no case shall the fee be based solely on the amount of the award." [85]

The board's perpetual and most difficult struggle was with the

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[81] N.Y. Rules Governing Practice and Procedure Before the Crime Victims Compensation Bd. (June 14, 1971).

[82] *Id.*, R. V(b).

[83] *Id.*, R. V(d).

[84] *Id.*, R. V(g).

[85] *Id.*, R. VI.

issue of establishing rules by which to judge serious financial hardship, a prerequisite under the Act for any award. First, it set down five items which would be excluded from the claimant's assets in arriving at a determination as to whether such financial hardship existed: (1) a homestead; (2) personal property consisting of clothing and strictly personal effects; (3) household furniture, appliances, and equipment; (4) tools and equipment necessary for the claimant's trade, occupation, or business; (5) a family automobile. Four months later—in September 1967—two additional items were placed on the list: (6) life insurance in the face amount of $1,000 for the claimant and a similar sum of $1,000 for the claimant's spouse and each dependent child; and (7) savings in an amount equal to one-half of the victim's annual income.[86] The amendments were designed to make the awards more liberal, at least partially ensuring that the board rules did not make frugality and foresight self-defeating.

The rules remained substantially as written from 1967 until June 1971.[87] In the interim, however, a major shift occured in the board's operating procedure. It was decided to place on the victim the onus of gathering the information to sustain his or her claim. This task had previously been the responsibility of board investigators. "On receipt of the completed application form the Board's staff makes inquiries by letter and appropriate forms to the police, doctor, hospital and the applicant's employer." [88] But investigators had found themselves spending inordinate amounts of time trying to gather information from uncooperative sources. Even with releases signed by their patients, many doctors proved unwilling to provide medical data, and investigators often had to spend many hours waiting their turn in physicians' offices. Blue Cross also threw up roadblocks, with slow reporting and a reluctance to provide information until all financial arrangements had been settled. The board's second annual report in 1968 spelled out its newly adopted procedure:

> "We have also found from experience that we were able to streamline our investigation by placing the burden directly upon the claimant. When a

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[86] *Id.*, R. VIII(8).

[87] *Id.*, R. XVI, for slight alterations.

[88] N.Y., 1967 First Rep., Crime Victims Compensation Bd., Leg. Doc. (1968), No. 16, p. 7.

> claim is filed he is asked to furnish certain information upon forms furnished to him. Normally this information, so far as possible, is expected within two weeks. If the same is not forthcoming a follow-up letter is sent, giving him a stated time, depending upon the claim, within which to submit this information and advising him that unless the same is received there can be no other recourse than to disallow the claim. This has proven must useful in expediting the disposition of claims." [89]

Testifying before a U.S. Senate Subcommittee in 1972, the New York board chairman defended the new procedure both on commonsense and logistic grounds: "[S]ince you feel that you have a claim and you are requesting some money from the State, then it is your responsibility to furnish certain information when you can. And at this point, believe me, claimants can do a great deal more in getting certain information, particularly statements and reports from doctors, than the board or its staff can do." [90] The difficulty, of course, is that in what appears to be a not insignificant number of cases, claimants may decide that it is not worth their time or trouble to pursue such information, despite their eligibility for assistance, since the added costs cut deeply—in fiscal and emotional terms—into any gains that might be achieved. The annual reports of the New York board are replete with terse little case summaries such as the following:

> "Claimant is the unmarried daughter of a 59 year old woman, who was shot to death by purse snatchers. Victim was a widow, with no dependents, who was supported by claimant. Basically the claim is for unreimbursed medical and funeral bills. Claimant failed to cooperate with the Board and in spite of repeated requests, she did not submit information upon which an award could be sustained. Claim disallowed." [91]

On the other hand, our field interviews with both successful and unsuccessful applicants showed without question that members of both groups saw the forms they were required to complete as a reasonable component of any grant-giving program. They generally said that they found the forms requested by the crime-victim-

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[89] N.Y., 1968 Second Ann. Rep., Crime Victims Compensation Bd., Leg. Doc. (1968), No. 100, pp. 5-6.

[90] Van Rensselaer, in U.S. Senate, note 50 *supra*, at 170.

[91] N.Y., 1969 Ann. Rep., Crime Victims Compensation Bd., Leg. Doc. (1970), No. 97, Case No. 746-D-49, p. 66.

compensation program less burdensome than anticipated and simpler than those they had faced in other bureaucratic encounters.

A second major procedural change inaugurated early in the work of the board was the addition to the claim forms of a consent clause which allowed the board to make payments directly to the victim's creditors. The explanation of this move in the second annual report reflects the dilemma in which the board had found itself: "This was done when the Board, in one instance, found that if the award was made directly to the claimant, he undoubtedly would never pay the hospital bill which was in excess of $3,000.00." [92]

There was further discussion of the consequences of this new procedure:

> "This has, of course, added immeasurably to the work in the office of the Secretary of the Board since the Comptroller, upon the approval of the claims, sends the checks for each claim to the Secretary whose office must send them out directly to those institutions, or persons, who have furnished medical services to the claimant. It was felt that this was a necessary step to insure that the state money was received by the persons entitled thereto. The balance, of course, if any, is payable to the claimant directly." [93]

The official rule changes adopted in 1971 also incorporated earlier legislative amendments to the Act, such as that which changed parent eligibility and removed the requirement that a physician's report had to be "duly sworn." The "serious financial hardship" requirement was liberalized still further. The specification that savings in an amount equal to one-half of the victim's annual income would not be included in the calculation when determining need was changed to read: "An amount not exceeding the victim's annual income." The board also added to the rule a statement saying that it was not under any obligation to help a victim maintain his previous standard of living, but only to see to it that he could maintain "a reasonable standard of living." Finally, a new rule was promulgated to deal with uncooperative claimants —providing a legal basis for terminating proceedings where there was foot-dragging, resistance, or other delays in providing information.

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[92] 1968 Rep., note 89 *supra*, p. 5.

[93] *Id.*

"All claimants and/or attorneys must fully cooperate with the investigators, agents and representatives of the Board and the police in order to be eligible for an award. In the event that such cooperation is refused, the Board or Board Member may deny the claim." [94]

The Caseload

By 1972, at the time of the U.S. Senate hearings on federal subvention to state crime-victim-compensation programs, the New York operation was employing ten investigators to look into more than 1,500 claims annually. There was a steep annual rise in filed claims between 1968 and 1971.

The board had had but twenty-seven cases during its first four months of existence, with a total of 196 cases for its first full year. By the next year (1969), that figure had risen to 519. In 1970, it rose to 929, and in 1971 to 1,594. The rate increase dropped slightly from 79 percent between 1969 and 1970, to 71 percent between 1970 and 1971, which may indicate a movement toward a saturation point. More likely, however, the decline in the rate of increase signifies only that as the totals grow, it becomes more difficult to sustain the same percentage increase because of the requirement of so many more individual cases for similar percentage rises. Certainly, the number of complaints to the police of violent crime victimization—38,000 for aggravated assault alone in New York State in 1971—indicates the likelihood of the existence of a very large reservoir of persons who could be eligible to receive victim-compensation awards.

Table I indicates the totals and disposition of its work by the board in its four years of existence.

A breakdown of the sex distribution among the applicants in the first 500 cases presented in the board's 1969 annual report is provided in Table II. In terms of all applicants—both those who received awards and those who were denied—the sex ratios indicate that 29 percent of the victims involved in the cases were females. This figure appears low when compared to other available information about sex ratios in victimization. Thus, a survey in Chicago conducted by the President's Commission on Law Enforcement and Administration of Justice indicated a rate of female victimization above 40 percent in "major crimes (except homicide) against

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[94] N.Y. Rules Governing . . ., note 81 *supra*, R. IX.

Table I: BREAKDOWN OF CLAIMS FILED AND SUBSEQUENT DISPOSITION BY BOARD

	1967-68	*1968-69*	*1969-70*	*1970-71*
Claims filed and investigated[a]	196	519	929	1,594
New York City area		369	656	1,063
Elsewhere		150	273	531
Inquiries		1,307		
Decisions rendered[b]	99	422	826	1,090
Awards granted	43	220	336	458
% of claims filed	22	42	36	29
Personal injury	151	427	222	366
Protracted disability			29	46
Death payment	45	92	85	46
Emergency	6	10		
Disallowed	56	202	490	632
Claims still under investigation			278	771
Decisions accepted[c]	84	371	727	1,002
Reviews		51	99	88
Original decision affirmed		32	67	47
Original decision reversed[d]		10	21	15
Tentatively denied[e]		9	11	18
Cases retaining attorneys		210	198	218
% of total filed		40	21	20
Amount of awards (mean)	$750			
Lump-sum payments		$1,410	$1,410	$1,930
Protracted		$4,071	$4,071	$3,450
Death payments		$3,000	$3,000	$2,040
Claims carried to subsequent year	10	50	119	212
Protracted disability	6	28	63	112
Death	4	22	56	100

[a] This number represents total investigations made by the board's two offices (New York City and Albany) in the fiscal year. It is the balance of claims remaining after "summary disposition" cases (e.g., for obvious failure to meet minimum eligibility requirements) have been eliminated. A total gross figure is not available since many such "claims" are disposed of by telephone inquiry, of which records are not consistently kept. Operationally, this number represents the total personal injuries claim forms received in the fiscal year.

[b] The discrepancy between claims filed and decisions rendered represents the carryover of unsettled claims from one year to the next. The rate of "claims" filed each year is increasing at a greater constant rate than the rate of decisions. Understandably, without increased staff, the board will soon be buried by its benevolence, for there is no reason to assume either trend, all other conditions remaining equal, should vary from the projection indicated.

[c] Board decisions accepted by the claimant at the time of publication of the board's annual fiscal report (late February).

[d] In full board hearings, the three members reconsider the decision of a single commissioner regarding a specific case. If a change is in order, however, it is administratively easier to allow a commissioner to "amend" his original decision, avoiding addressing the director of the budget with a request for additional funds or an explanation of a reversal. Therefore, amended decisions may operationally appear under "original decision affirmed," suggesting more coherence among board members than actually exists.

[e] "Tentatively denied" notes claims which, for lack of information or inconclusiveness of evidence, cannot yet be equitably affirmed or disallowed. Therefore, they remain open for reconsideration pending new developments in the claimant's economic or physical status.

the person." [95] Homicide as Table II shows, is an offense which disproportionately involves male victims; 95 percent of the compensation applicants in adult death cases are widows. Eliminating it raises the female victimization rate to about 35 percent of the total, and this figure may reflect rather accurately the total universe of applicants in terms of sex who could have applied for aid. We do not find any information from this cursory investigation that would indicate that men or women are disproportionately (in terms of their victimization rates) applying for or receiving compensation in New York.

The rather higher denial of applications from widows, the internal evidence of the case reports suggest, seems to be a function of the fact that many of them are beneficiaries of insurance policies or other kinds of income which accrue to them on the death of their husbands.

Table II. DISTRIBUTION OF SEX, RELATIONSHIP, AND OUTCOME OF FIRST 500 APPLICANTS IN 1969

	Received	*%*	*Denied*	*%*
Female for self	60	26.0	70	29
Male for self	126	56.0	122	51
Widow	26	11.0	34	14
Widower	1	0.5	2	1
Parent of female	1	0.5	2	1
Parent of male	13	6.0	10	4
Withdrawn or closed			(19)[a]	
Inadequate information for classification	(3)[a]		(11)[a]	
Total	227	100.0	240	100

[a] Not counted in totals or percentages.

Calculations of the ages of the applicants, both those who are successful and unsuccessful, indicate that without question, the compensation program tends to benefit older applicants more often than they are proportionately the victims of violent crime. This is particularly true in the cases of women. Thus, although the President's Commission found that "crimes against the person, such as aggravated assault and robbery, are committed relatively

[95] President's Comm'n on Law Enforcement and Administration of Justice, *Task Force Report: Crime and Its Impact—An Assessment,* Table 15, p. 80 (1962).

more often against men who are from 20 to 29 years of age," [96] our random tabulation of 100 cases from the 1969 annual report of the New York board found only fifteen cases (21 percent of the male cases) in this category. Twenty-eight of the male victims (38 percent of the male cases) applying for compensation, on the other hand, were fifty years or older. For the women, twenty out of thirty claimants (67 percent of the female cases) were fifty years or older. Eligibility requirements, knowledge of the law, willingness to take time to comply with the regulations, and, perhaps, the kinds of injuries suffered by different age-group members and their general health and resiliency, account for these findings.

Publicity

The discrepancy between the number of presumed potential qualifiers for state and and the number of persons who actually apply for such assistance is largely regarded as a function of lack of public and official information about the program's existence. "Oddly enough," a story in the *New York Times* Magazine notes, "very few people know the program exists." [97] "There are even prosecutors who have never heard of it," one of the board members observed.[98] The failure to attract more eligible applicants is a theme that recurs in board reports. Generally, the tone is one of concern, based on the underlying assumption that the state had mandated the program with the intent of having each and every person who qualifies receive assistance. Given the chronic shortage of state funds, however, and the particularly aggravated nature of fiscal pressures in recent years, there are also subtle pressures geared toward keeping the cost of crime-victim compensation from escalating so dramatically that it might jeopardize the entire program. A somewhat cynical, but not totally incorrect, statement on the issue of publicity about the program has been put forward by Judge (formerly Assemblyman) Weinstein:

> "Well, look how they publicized the lottery which is supposed to supplement the State's financing of education. And look how they advertise

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[96] *Id.*, p. 81.

[97] King, "If You Are Maimed by a Criminal, You Can Be Compensated (Maybe)," N.Y. Times Magazine, March 22, 1972, p. 122.

[98] *Id.*

> the new O.T.B. [Off-Track Betting]. *Everyone* knows about those 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 the distinction, and that's why it hasn't been done." [99]

Shortly after the New York program was inaugurated, the board distributed almost a quarter of a million brochures about its operation to organizations which were believed to be in a position to inform crime victims of their rights under the new law. Results were meager. A board member, fulfilling one of the very numerous speaking engagements undertaken by him and his colleagues, found that the official who had invited him to speak performed the introduction and then departed. Quite annoyed, the board member concluded that he was often being used as a patsy for hard-pressed program chairmen seeking suitable (and free) guest speakers.[100] Board members nonetheless continue to spend much time addressing civic clubs, conventions, and professional groups, and appearing on television programs although they generally are now convinced that such work takes more time than it is worth in terms of producing results. They have found too that stories in newspapers about dramatic cases which resulted in large awards elicit a quick flurry of application but that this stepped-up pace of activity lasts only briefly.

By far the largest number of claims, the board chairman believes (intuitively, he admits), arise from knowledge of the program obtained from word of mouth. Obviously, such information can be scattered more widely by systematic effort, but results to date have been disappointing. When brochures and applications were distributed to hospitals, says a board member, "we got back a deluge of frivolous claims prompted by hospital officials." Early in the program, placards were placed in New York City subway cars announcing the program's existence and function as part of the governor's reelection effort. The board, one member recalls, "was immediately snowed with people standing in line wanting money. The posters sounded like the compensation was a govern-

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[99] Sutton, note 31 *supra*, Sec. VII, p. 16.

[100] *Id.*, Sec. II, pp. 1-3.

ment handout." Most people, he remembers, had lost a watch or a hundred dollars—they just wanted it back.[101]

Expeditiousness

The increasing number of claims, combined with the frail health of the state budget, has resulted in a growing case load being assumed by a nongrowing work force. The most notable consequence of this condition has been the elongation of the time that it takes to process claims. The board's annual reports provide specific testimony on the matter. The first report notes with some pride that it was taking forty-five days to complete work on an application.[102] The next observes that "wherever possible," claims were being processed within sixty days.[103] The third report says that a claimant can usually expect a decision "within 60 to 90 days." [104] A case discussed at length in a *New York Times* Magazine article took eight months to settle; by mid-1972, the average period, according to the writer, was three months.[105]

Absent further appropriations or some new procedural breakthroughs, it appears likely that the New York program is inevitably headed toward the kind of delays and backlogs that mark conditions in the civil courts in the United States. In 1972, there were ten investigators employed by the board, with a senior and supervising investigator and five other agents in New York City, and a senior and two other agents in Albany. The investigators were reported to be carrying forty cases continuously and to be disposing of about fifteen each month. Their backlog in March 1972 was 1,100 cases, and it was growing each month.[106] As part of their work, the investigators were encouraged to talk with each applicant personally—preferably in his home—and the traveling and scheduling difficulties were contributing to the increasing backlog. Clearly there are major difficulties ahead if staff resources do not increase or different arrangements are not made to handle the board's increasing work load. Figure 1 clearly shows the trend.

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[101] *Id.*

[102] 1967 Rep., note 88 *supra*, p. 7.

[103] 1968 Rep., note 89 *supra*, p. 9.

[104] 1969 Rep., note 91 *supra*, p. 7.

[105] King, note 97 *supra*, at 122.

[106] *Id.*

Minimum Limits

A minimum level below which awards would not be made had been established primarily to prevent frivolous claims and to make certain that the cost of administering a claim did not far exceed the amount involved. The minimum standard may be attacked, however, on two grounds: The first is that this standard makes the Act class legislation in that it deprives precisely those persons who most need the compensation from receiving it. This argument suggests, among other things, that if there were no standard many

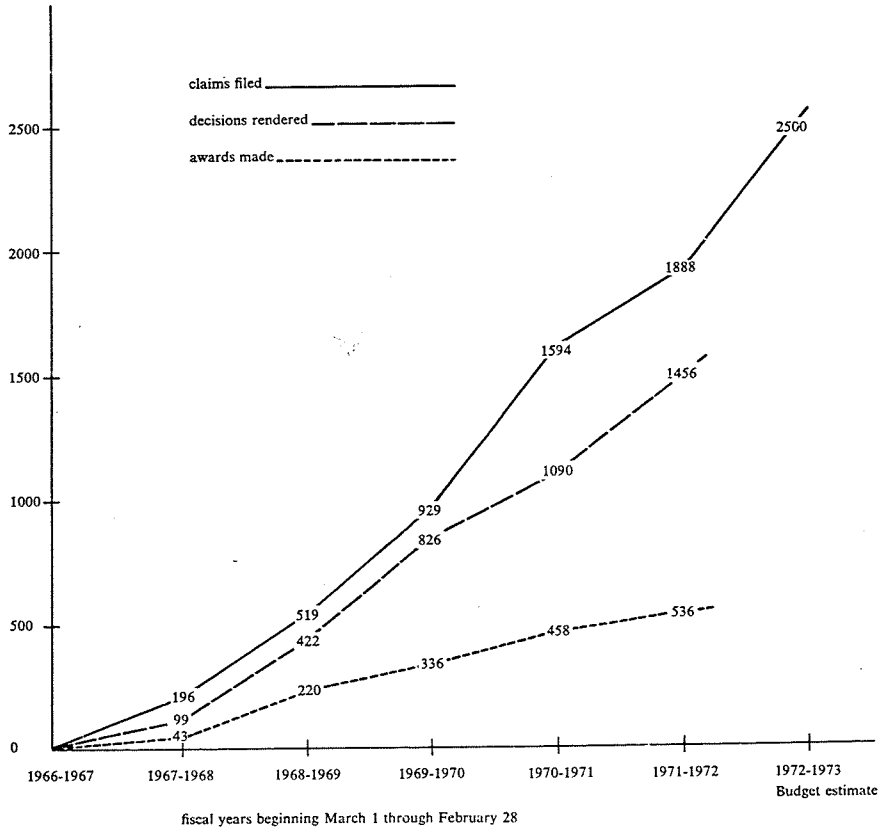

Figure 1
The Work Load

persons of means would not bother to file for a small sum, while those of limited resources who were in real need of the money would be eligible to receive it. Second, the argument is sometimes offered that one of the major indirect benefits of crime-victim-compensation programs is that it creates goodwill among citizens, particularly among persons who because of their victimization are

thereafter apt to be hostile to the social and political system. Therefore the program should aim to encompass as many persons as possible within its ambit. Five small checks would, it is said, make five recipients pleased with the manner in which their government operates; one large check satisfies only one person.

The *Columbia Journal of Law and Social Problems,* discussing the question of the established minimum in the New York program, suggests that "there are better ways to ease the administrative burden. The act could impose a filing fee to eliminate insignificant claims. Alternatively, different minimums could be imposed for different levels of income." [107] Neither of these suggested approaches appears to offer particularly attractive resolutions of the issues associated with minimums. In New York, the largest number of applications which fail do so because they do not meet the minimum amount set for reimbursement. In 1968, fifty-seven of the 202 claims which were rejected were turned down on this ground, the next most common basis was failure to meet the standards of "serious financial hardship," a matter which involved fifty-four cases.[108] In 1969, 126 of the 490 applications rejected—again the largest number for any category—failed to meet the minimum,[109] although it is possible that they might have been rejected on other grounds had they involved requests for more money. Perhaps the most persuasive argument against the establishment of a minimum figure for reimbursement lies in these figures themselves. Since the claims are submitted anyway (though perhaps many others are not), and at least a cursory examination is given the ingredients of the applications, the matter might just as well be resolved without further ado by making the award as by denying it. Indeed, perhaps simpler investigative procedures might be established to apply only to awards which do not request substantial sums of money.

Maximum Limits

The establishment of a ceiling (except for medical expenses) on awards in many instances serves to make the award only a

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107 "New York Crime Victims Compensation Board Act: Four Years Later," Colum. J. L. & Soc. Probs. 7, 42 (Winter 1971).

108 1968 Rep., note 89 *supra*, p. 7.

109 1969 Rep., note 91 *supra*, p. 11.

temporary palliative, rather than an adequate reimbursement for the losses attendant upon victimization by violent crime.

The classic case of Arthur F. Collins illustrates some assets and shortcomings of the maximum-award standard. A woman in Mrs. Collins's position could have been assisted for approximately four years under the state program. In that time, she might have remarried and could have moved more certainly toward earning an adequate income. Her child would have been ready for school by the time of the grant expiration, thereby easing somewhat the widow's child-tending burden. On the other hand, it is possible that the beneficiary might have continued to need financial assistance to maintain a decent life and to offset the consequences of the killing of her husband. The setting of a maximum can be seen as another frustration of the articulated purpose of the program.

The maximum-award ceiling of $15,000 in New York is well under the $45,000 top in Maryland, where the limits of victim compensation are tied to the amounts awarded under the workmen's compensation statute. It is interesting too that the proposed federal program to compensate victims contemplates awards of $50,000. The New York ceiling, however, is higher than the $10,000 maximum in Hawaii, Massachusetts, and New Jersey. In fact, the $10,000 limit in the New Jersey program, which began on November 1, 1971, led one of the New York board members into a bit of self-indulgent condescension: "That $10,000 is pretty rough," the commissioner told the *New York Times*. "But let's put it this way: it's a young program that deserves a chance." [110]

At the Second International Conference on Victim Compensation, the New York board chairman mused about the implications of the $15,000 ceiling as he had seen it bear upon the operation of the scheme during its initial years:

> "I don't know. Any limit you put on is going to be arbitrary, completely arbitrary. But [with] $15,000 under our statute, we can pay $100 a week. So three years, or just under three years, is all we can do for a person—other than [medical expenses]. . . . I think you have to look at the intent of this type of a program: The legislature puts in something as a declaration of policy. Nice sounding. The words are beautiful, well written grammatically, it's better than the L&M cigarette business. But, when you get down to this last payment (and this is the first one that

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[110] Saxon, "State Funds Aiding Violent-Crime Victims," N.Y. Times (News of New Jersey section), July 23, 1972.

> we have paid the full amount to), you just think what can be done—and [ask] how much good have we done, or have we just been holding this guy up with sort of less than a three-year prop, and now what's going to happen to him. In the first instance, we thought we were really helping the fellow. Now I'm not so sure. I hope we've helped him, but I don't know where we're going to go from here. So, I feel with maximums certainly something has to be done, and hopefully we can do something." [111]

Essentially, the major alternatives regarding the maximum involve (1) its abolition, with the possibility of an open-ended award, with its amount tied to some extrinsic standard or to characteristics of the victim's fiscal position; or (2) its establishment at a different level, perhaps equally arbitrary but more in keeping with objectives sought to be achieved by victim-compensation legislation.

In New York, no maximum amounts are set on medical expenses which may be reimbursed when they are incurred as a result of criminal victimization. So far the largest award made in New York—more than $25,000—went to the parents of Jean Cruz, a twenty-four-year-old French exchange student who was robbed and shot in the neck in 1971. Cruz was paralyzed by the bullet and later died. His medical expenses exceeded $35,000, but he had a $10,000 student life insurance policy at Tulane University where he had been studying.[112]

The burgeoning cost of medical care is believed by board members to have been largely responsible for the necessity to request $100,000 in the state's 1971 deficiency budget, the sort of thing that administrators generally prefer to avoid. An annual report notes: "Hospital and medical expenses continue to rise." [113] Under such conditions, there were reports that the New York board might seek to limit the total amounts that could be reimbursed for medical expenses.[114]

(Part II will appear in the March 1973 issue.)

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[111] Second Int'l Conference, note 49 *supra*, at 56.

[112] King, note 9 *supra*, at 124.

[113] N.Y., 1970 Fourth Ann. Rep. Crime Victims Compensation Bd., Leg. Doc. (1971), No. 95, p. 12.

[114] Van Rensselaer, in U.S. Senate, note 50 *supra*, at 170.

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Part II—Public Compensation of Victims of Crime: A Survey of the New York Experience*

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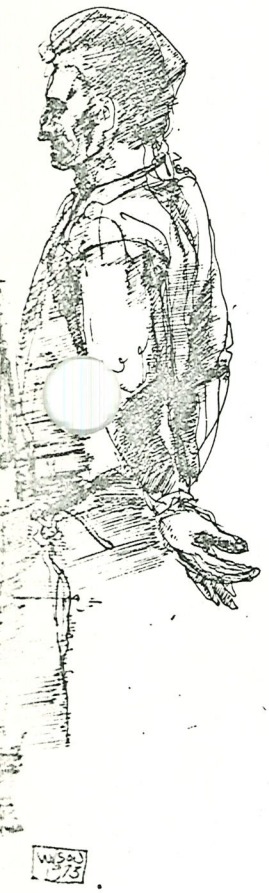

This is the second and concluding installment of what is perhaps the most detailed and comprehensive study of a victim compensation program.

Fraud

Virtually all debates on victim compensation at one or another point find opponents of proposed measures insisting that a major difficulty is that the claims will be marked by fraud.[115] It is said that

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[115] See, for example, Inbau, 8 J. Pub. L. 203 (1959); Scott, "Compensation for Victims of Crimes," 19 Vanderbilt L. Rev. 226 (1965).

"One of the disadvantages of a scheme of any kind would be its vulnerability to exploitation by fraudulent or undeserving claimants with the consequent probability of its falling into disrepute." Great Britain, *Compensation for Victims of Crimes of Violence;* 1406 CMND 41 (1961).

claimants will mulct the state, exaggerate expenses, simulate victimization, and in other ways defraud those who had in misplaced compassion attempted to aid legitimate victims. Reference is often made to automobile insurance, where American drivers with some regularity enter padded claims and often share their illegal profits with the garage doing repairs. Property insurers offer the same kinds of cynical observations. They note that claims following the theft of property often wildly exaggerate the amount and the value of the merchandise stolen. A constant statement by thieves themselves is that their dishonesty is exceeded by that of their victims. They say that when they read in the newspapers inventories of what they allegedly had stolen and compare them to what they have in hand, the discrepancies provide them with a sure index to the rampant crookedness existing among what are supposed to be the more respectable elements of the society.

Most victim-compensation programs, after a few years of operation, begin to report that anticipated fraud simply has not materialized. In part, perhaps, this is because of the novelty of the programs, and the relief that victims come to have in securing aid when none had been anticipated. In part, perhaps, some fraud remains unobserved.

The New York program is the only one in America where the issue of fraud has been studied in regard to specific instances of attempts to take improper advantage of the law. The chief investigator for the New York board, Angelo Petromelis, tells of a man who stole blank receipts from a hospital office and submitted them as part of a claim for reimbursement. The investigator, however, noted that the forms were numbered consecutively. When he questioned the claimant about the matter, the man ran out of the office. Petromelis notes: "With such a wilful and deliberate attempt to defraud, we will deny the claim altogether. But as long as someone is actually the innocent victim of a crime and his claim is bona fide, padding is not looked at particularly harshly, but we must naturally eliminate all padding in all cases." [116]

Padding or overestimating seems primarily an attempt to avoid being excluded on grounds of not meeting the criteria for "serious financial hardship." The board often adopts an attitude of benevolent skepticism in such matters, based on the idea that the victims

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[116] Sutton, note 31 *supra*, Sec. V, pp. 4-5.

after all are the "good guys," and that they ought to be treated with kindness and compassion and not badgered about minor discrepancies in their claims.

The board also takes pride in the fact that it has, on occasion, taken the initiative to develop a factual basis for a claim where the claimant was unable to do so. The following case is illustrative:

> "An alleged bouncer in a discotheque was killed in another bar by the boyfriend of a girl he was annoying. The bouncer was not armed. His pregnant wife filed with the C.V.C.B. for loss of support. Everyone told the investigator that the victim had not worked there. Finally, the investigator hung around bars and talked to some of the dancers and girls who worked there and found that the victim had worked in one of the places, but that he was paid 'off the books.' The management, faced with this information, still refused to acknowledge employment. So the investigator established what was a 'reasonable income for the kind of work he was doing' and the widow received that amount for compensated loss of support." [117]

The investigator, generalizing on this case, observed: "If we can make an award under the law, we make it." [118]

Cooperation With Law Enforcement

A key issue in crime-victim compensation—whether the existence of a program leads to more willing and more worthwhile cooperation by victims of crime with the criminal justice system—still largely remains unanswered in terms of the experience in New York. There is some evidence that this is the case. In its 1968 report, the board made the following observation on the matter:

> "During the past year the Board has learned from police agencies that in many instances the victim is not interested in the prosecution of his assailant because he has many more immediate and pressing problems. In addition, the victim without the benefit of this statute is left with nothing except his bills, the worry of his family, as well as the disruption of his household. However, since the innocent victim of crime in New York State may file a claim, it is hoped, and there has been some experience to indicate, that he would be more willing to cooperate with law enforcement agencies knowing someone cares about him. In this respect the victim who was an unwilling and uncooperative witness now becomes a willing and cooperative witness." [119]

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[117] *Id.*, Sec. V, p. 10.

[118] *Id.*

[119] 1968 Rep., note 89 *supra,* pp. 11-12.

Essentially the same language, in truncated form, appeared in the 1969 report: "The staff has learned, in several instances, that the victim has become a more willing and cooperative witness to the prosecution upon learning that he is eligible under the statutes to perhaps receive some aid in his time of distress." [120] The 1970 report, perhaps on the basis of the additional experience of the board, put the matter a good deal more strongly: "Crime victim programs also aid in the prosecution of criminals. When a victim is fairly treated by society he certainly is more willing to cooperate with the law enforcement officials." [121] The board also suggests that its existence is possibly responsible for more accurate crime statistics, by encouraging the reporting of offenses which otherwise might have been neglected because the victim saw no possible gain from notifying the authorities.[122]

Neither of the first two board reports indicated that there were any claim rejections for failure to report crimes to the police. There are twenty such instances noted in the third report, however, and twenty-three in the fourth report. Typical is the following case:

> "Male, 67, alleges in filed claim that he was stabbed by unknown assailants. However, records of the police department fail to disclose any report of a crime or an aided card. The amount of his out-of-pocket medical has not been determined. Unreimbursed lost earnings amount to $1315.25. Since there is no police report, the claim is disallowed." [123]

In regard to late notifications to the police, the assumption often is that the report was filed only to attempt to qualify for compensation. This belief underlies the decision in the following case:

> "Claimant as widow, husband age 75, filed claim alleging an assault committed on her husband by unknown assailant. Decedent died several days later. No police report filed; all precincts covering the place of crime were checked. Attorney advised report had been filed. Investigation reflects report filed by son 5 months and 11 days after occurrence. Claim disallowed pursuant to Sec. 631, subd. 1, as no just cause for delay in filing police report has been shown." [124]

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[120] 1969 Rep., note 91 *supra*, p. 19.

[121] 1970 Rep., p. 16.

[122] *Id.*

[123] 1969 Rep., note 91 *supra*, Case No. 563-P-68, p. 33.

[124] Id., Case No. 646-D-69, p. 45.

The linkage between law-enforcement work and crime-victim compensation has largely remained unexplored and unexploited in New York. No particular effort is made to include information about the program in the State Police Academy curriculum. The state training program responsible for preparing and certifying officers for municipal service outside of New York City, which is administered under the Municipal Police Training Council of New York, now includes a half-hour lecture on victim compensation, although the deputy director of the program personally believes that the district attorneys rather than law-enforcement officers should be responsible for disseminating information about compensation.[125] The possibilities of information about victim compensation aiding the police in their work were underlined by a New York City sergeant who had been asked what he knew (the answer, "Nothing") about the program:

> "You know, this could really help us. I always feel so damned impotent when I answer a call for a robbery or a mugging. What do you say to the guy? He doesn't want your sympathy. So I usually tell him that his loss is tax deductible, but [laughing] I don't think that is much consolation. But what can we do, you know? But this thing is great! It'll really give us something we can do to help." [126]

Motor Vehicle Cases

The New York law, like all the victim-compensation statutes in American jurisdictions, allows awards to be made to victims for motor vehicle crimes only if the vehicle had been employed as a weapon. The assumption is that compulsory automobile insurance laws, plus provisions for recovery from state sources in accidents involving uninsured motorists, adequately foreclose need for further sources of funds for victims of automobile accidents.

In its four-year experience, the board has rejected the following numbers of claims because they did not meet statutory provisions under the section pertaining to motor vehicle cases: 1967, 2; 1968, 1; 1969, 2; 1970, 0. Given the low, and perhaps disappearing, number of such claims, this part of the law cannot be said to have represented much of an administrative problem for the board.

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[125] Sutton, note 31 *supra*, Sec. VI, pp. 2-3.

[126] *Id.*, Sec. VI, p. 3.

Family Relationships

The categoric provision allowing no recovery to members of the offender's family was, it will be remembered, one of the aspects of the victim-compensation law that came in for early criticism. The objections were based on the view that the clause precluded persons who might by reasonable standards be innocent and worthy victims of violent crime from receiving awards.

During the first year of the board's operation, no awards were denied on the basis of family relationships. There were two cases denied on this ground in the second year, nine in the third year, and six in the fourth. In four cases reported consecutively in 1969, the board disallowed claims by the husband of a victim killed by her brother-in-law; two fathers of youngsters who had been killed by their uncles; and a claimant shot by his brother-in-law. In another case, a victim was murdered by her husband. Had she survived, she would not have been eligible for an award, even though she was not living with the husband at the time of the assault. When she died, however, her surviving infant son was granted an award, since he was neither the husband's child nor a member of the husband's family or household.[127] A typical family case is detailed below and offers fuel for those who would prefer to inquire case-by-case into the nature of the family relationship before reaching a decision on the possibility of unjust enrichment:

> "Claim filed by husband whose wife, age 60, was attacked in her home, carried to the basement where she was stabbed and died immediately thereafter. The assailant is the nephew of the victim and Sec. 621, subd. 4 mandates that the family is defined as any person related to the victim within the third degree of consanguinity or affinity. Sec. 624, sub. 2 recites that a member of the family shall not be eligible to receive an award. Accordingly, under the statute, the claimant and his infant children are not eligible. . . . On review, decision affirmed." [128]

Provocation

Neither the board reports nor personal interviews with board members indicate that the matter of provocation has, at least to date, proven to be an overly troublesome issue for the board's decison-making processes, although it involves a good deal of

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[127] 1967 Rep., note 88 *supra*, Case No. 15-67-D, p. 14.

[128] 1969 Rep., note 91 *supra*, Case No. 1116-D-69, p. 164.

investigative time and skill. It should be noted, in this connection, that in England, where the victim-compensation program has no "serious financial hardship" test, matters of provocation are said to be the more important concern in adjudicating award applications. In part, the greater English concern with provocation may well be a function of the basis upon which damages are assessed—normal tort law—which carries with it the possibility of very large awards. A 1972 letter from Sir Walker Carter, chairman of the British board, to Senator McClellan expressed some views on the matter:

> "We have found this the most difficult part of the Scheme to administer. Should awards be made to persistent and violent criminals? Does the serving of a sentence by an offender wipe the slate clean? Should the victim have a duty to care for his own safety even if this means abandoning some of his rights? e.g., to walk through Central Park after dark." [129]

The relevant section of the New York statute—Section 631(5)—reads as follows:

> "In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of the injury, and the board or board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination. . . ."

The terse details provided by the New York board in the summary statements on each case clearly indicate that it does not employ the tactic of reducing awards because of the victim's contribution to his own victimization. After the degree of provocation is determined, the award is either made or denied altogether. Explicit standards are difficult to locate and to attempt to generalize on the basis of the comparatively few details available might do the board's reasoning process injustice. Some sense of the manner of proceeding on provocation is provided, however, in a case involving two men who became involved in an argument while both were standing in line at a food-service counter. The first man left the restaurant but returned later to renew the squabble. This time he brandished a claw hammer. He strode toward the second man and swung the hammer at him. The man pulled out a pistol and shot him dead.

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[129] Walker Carter to John L. McClellan, Jan. 5, 1872, in U.S. Senate, note 50 *supra*, at 495.

In this case, the board decided that the wife of the decedent had the right to collect an award. It argued that evidence from witnesses indicated that the dead man had intended no more than to swing the hammer at the other person's legs, and not to kill him. A board member also reasons that had the assailant not been carrying a gun, he would have left the scene, but that instead he had incited his victim by walking toward him and taunting him.[130]

On the other hand, the board denied a death claim from the family of a man who had visited a prostitute and been beaten to death in her apartment. The board reasoned that had he not chosen to engage in an illicit situation, he would not have been killed.[131]

Attorneys

The relationship between the board and attorneys is one that might best be described as "uneasy." As attorneys themselves, board members have a vested interest in the "health and welfare" of their own profession. As experienced attorneys, they also have some skepticism as to the motivations of particular practitioners who appear before them. All told, they like to see attorneys involved in the board's work, but they are apt to become impatient when some attorneys press too hard and too harshly against the more ambiguous elements of the board's charge.

Fees for legal representation of claimants are awarded on three basic criteria: (1) the amount of work actually done for the claimant; (2) the claimant's financial situation; and (3) the type of award made. Attorney fees are approved only when loss of earnings or support form part of the claim, or where the claimant has already paid some part of the medical expenses out of his own pocket. Under the latter condition, the attorney may collect only up to the amount that the claimant has already paid. Attorney fees in victim-compensation cases tend to range between $25 and $350.[132]

About one out of every five claimants is represented by an attorney.[133] It is impossible to determine the functional relation-

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[130] King, note 97 *supra*, at 123-124.

[131] *Id.*

[132] Sutton, note 31 *supra*, Sec. IV, pp. 4-5.

[133] King, note 97 *supra*, at 122.

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ship between such representation and the success rate of applicants, since the decision by some clients to seek legal representation is hardly a random one.

Board members believe that the relatively low fees available tend to discourage attorney participation in victim-compensation proceedings. As one board member put it, the attorneys seem to lose interest when "they discover that there is no 33 percent contingency and no conscious pain and suffering clause."[134] The apparent decreasing appearance of attorneys is not regarded as a total program deficit, however, because at times attorneys appear to the board to be inappropriately legalistic for the informal atmosphere normally maintained in hearings. Such a complaint, obviously, is a common one for administrative agency officials, who not unreasonably often prefer to have their discretion go unchallenged. In addition, of course, as a new and novel program, the New York victim-compensation system is particularly vulnerable to attempts by attorneys to establish different policies or to review young precedents. In part, too, the objection to attorney work before the board is undoubtedly a reflection of diversionary tactics that are occasionally used by lawyers intent upon demonstrating to clients that they are earning their fee, even if their activity only involves harassing an administrative agency along what are obviously (and perhaps reasonably so) hopeless lines.

In fairness to attorneys, the fee schedules in victim-compensation work are quite low. These fees might make sense in a workmen's compensation context, where attorneys specialize and usually have a considerable volume. There is no indication of specialization in victim-compensation cases which would make it possible for attorneys to handle cases in a profitable manner.

The board chairman in New York has proposed that attorneys be allowed to collect fees even if the applications they pursue are rejected, on the ground that the amount of work that can go into an unsuccessful plea obviously merits reimbursement.

The entire question of legal representation in crime-victim-compensation work is one that requires further exploration. For instance, future study might be made of the experiences and work of attorneys who appear before the board. Such studies might con-

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[134] Sutton, note 31 *supra*, at 465.

sider whether it would be desirable to grant all applicants access to legal representation with the cost to be paid by the state.

Appeals

Two types of appeals lie from decisions of individual board members on particular cases: the first to the entire board; the second to the courts. As far as appeals to the three-man board go, they have tended to be relatively rare: 51 cases (10 percent) in 1968, 99 cases (11 percent) in 1969, and 88 cases (6 percent) in 1970. More than half of the individual member decisions are sustained on appeal—63 percent in 1968, 68 percent in 1969, and 53 percent in 1970. Conversations with applicants indicate that for some the idea of appealing their case to a group that includes, as one-third of its total, the person who had originally rejected the claim is not particularly appealing (in both senses of the word). They also note that they are sometimes fearful of going further with an original decision to which they object because they feel they might jeopardize what they have already been given, with only an outside chance of receiving what they believe they deserve. In view of the relatively high percentage of successful appeals, they may be mistaken.

There have been no appeals from decisions of the board by the attorney general or the controller. In terms of client appellate rights, Childres has argued that an ideal statute should always provide a right to appeal, and the New York provision, he would likely maintain, is inconsistent with American administrative law practice.[135] If the English experience may be taken as a guideline, it indicates that even an express denial of the right of appeal by the legislating body will not stand when a court is confronted with an arguable issue of some importance to the welfare of a citizen.[136]

Serious Financial Hardship

Each annual report of the New York Crime Victims Compensation Board bewails the problem of justly defining "serious financial hardship." This litany of lament about the provision clearly grows out of cases in which the board, bound by the legislative mandate

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[135] Childres, note 22 *supra,* at 465.

[136] R. v. Criminal Injuries Compensation Bd., *Ex parte* Lain, 2 All E.R. 770 (1967).

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and by its own rules, has had to reject applications of persons with cases that are especially worthwhile, while at the same time they are making awards to other persons whose cases are less meritorious. In addition, the board members apparently feel frustrated by a common response of rejected applicants: "I am paying taxes; why shouldn't I get compensation? I've never asked for anything that wasn't rightfully mine. I just want what's due me. If the Board can't do that, what good are they?" [137]

The board's first annual report stated that "one of the most difficult tasks in preparing . . . rules was to establish guidelines in determining serious financial hardship." [138] Noting changes in its rules referring to hardship, the second report called them the product of the board's having "wrestled with this problem." [139] The third report returned to the issue and told in considerable detail of the board's approach and its concerns:

> "The most difficult problem is the question of serious financial hardship. The Rules of the Board have been adopted to conform with the statutory provisions allowing the Board Member, in his discretion, to exempt from the financial resources the claimant's home, his automobile, tools and an amount of his savings not exceeding one year's annual earnings. However, there are many instances in which there are other considerations that allow the Board Member in his discretion to make an award. For example, even though a claimant may have assets which would under normal conditions preclude an award, the age of the claimant must be considered. In addition, the physical and/or mental condition of either the claimant and/or his dependents must at times be considered." [140]

By the fourth annual report, the tone had become more that of advocates, perhaps a consequence of the board members' own dissatisfaction with what the Act required of them:

> "The most difficult problem still continues to be determining the question of serious financial hardship. Many of the elderly people who are retired, who have worked many years, have been frugal and have saved money to take care of them in their declining years represent one group that the Board feels should be reimbursed for their medical expenses. However, the statute makes no distinction and, therefore, with substantial savings the statute does not permit an award to these elderly persons.

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[137] Sutton, note 31 *supra*, Sec. II, p. 6.

[138] 1967 Rep., note 88 *supra*, at 5.

[139] 1968 Rep., note 89 *supra*, at 6.

[140] 1969 Rep., note 91 *supra*, at 11-12.

> "Another segment of our society is the middle income man who has supported his family, has been gainfully employed and is not only a respectable but a responsible citizen. This claimant feels that having been a law-abiding citizen who has worked hard and paid taxes he is entitled to receive his unreimbursed medical expenses and his loss of earnings within the limitations allowed by the statute. The Board continues to feel that these two classes of individuals should be compensated." [141]

More personal background for the sentiments expressed in the reports appears in an off-the-cuff statement by the New York board chairman during the Second International Conference on the Compensation of the Innocent Victims of Crime. "I don't know about you," he said to the other administrators present, "but the letters we get no newspaper would publish, believe you me, when we turn someone down on serious financial hardship." [142]

Particularly interesting in this connection has been the observation of the chief investigator in the New York program that elimination of the "serious financial hardship" stipulation would add only about $150,000 to its cost, or an increment of about 10 percent.[143] In part, the cost estimate is based on the expectation that richer persons would either have adequate insurance coverage in many instances or, if their loss were small, would not bother to apply for compensation funds. In addition, of course, crimes of violence tend to be class-related, and much more frequently to involve victims without means. Elimination of the hardship requirement, therefore, would probably add relatively few persons to the roster of potential applicants.

The amount of assets that the board finds sufficient to disqualify an applicant varies strikingly from case to case. A claimant in her late twenties with a good job and no dependents was disqualified because she had $8,000 in savings. [144] On the other hand, two elderly women with substantial expenses as the result of victimization received awards, despite the fact that they both had more than $18,000 in savings.[145] Perhaps the most constructive

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[141] 1970 Rep., p. 11.

[142] Van Rensselaer, in Second Annual Conference, note 49 *supra*, at 59.

[143] Sutton, note 31 *supra*, Sec. V, p. 12.

[144] 1969 Rep., note 91 *supra*, Case No. 503-P-68, p. 27.

[145] *Id.*, Case No. 922-P-69, pp. 1120113; Case No. 1056-D-69, p. 150.

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reading of the statute by the board involves the procedure whereby it makes a determination that the resources of a claimant are apt to be exhausted within a certain period because of the expenses of victimization. Under such circumstances, the board tells the victim, the case may be reopened and he may gain aid if he can later demonstrate that he used his own money in a reasonable manner.

The manner of thinking used by the board on such matters was described in 1968 by its chairman at the First International Conference on Compensation to Victims of Violent Crime. The case also indicates an auxiliary board problem: how to accurately establish support figures:

> "[T]he first case I think is the best example of it. We had this gentleman who was murdered, leaving a widow, who owned their own home and who had a substantial amount of savings, but based upon her normal life expectancy and her living expenses, we could determine that if she lived her normal life, she was going to run out of money.
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> "So, we made a decision in which we said that at this moment . . . there was no serious financial hardship, but left it open for her to come back in and upon showing that her money . . . had not been wasted or dissipated in any way . . . we would then be in a position to make an award. . . .
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> "And then an aside which I think is interesting . . . To determine her loss of support, the statute says 'actual loss of support.' So, she produced her husband's income tax return, but she said: 'That isn't really what he made. He made about twice that.' " [146]

Hearings

A sense and a flavor of the board's work can be gathered from an eyewitness to two cases heard on appeals to the full board in New York City on December 9 and 10, 1971.[147]

Case No. 1

The applicant was a male, seventy-four years old, who had been assaulted and robbed in New York City in a corner grocery store which he and his wife owned and operated. The single-member disposition had resulted in denial of the award on the

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[146] Int'l Conference on Compensation to Victims of Violent Crime, *Proceedings* 150-151 (December 3, 1968).

[147] Sutton, note 31 *supra*, Sec. V.

ground of absence of "serious financial hardship." The couple claimed that they had to liquidate their business in order to cover their bills. Their assets came to $28,500, representing $14,000 realized on the sale of the business and $14,500 in savings. Their bills from the crime were enumerated as follows:

Medical expenses	$6,992	
Less coverage	6,938	54
Nursing home (intensive care)		900
Dental expenses (fractured jaw)		400
Additional medical (ulcer)		225
Total		$1,579

The discussion among the board members focused on the following matters:

(1) The relationship between the expenses and the crime. Medicare had rejected the $900 nursing home bill on the ground that it was an unwarranted medical expense. The board also questioned its necessity and whether the expense was causally related to the crime.

(2) The question of serious financial hardship. The board concluded that were the applicant forty-five years old rather than seventy-four, the adequacy of the assets of $28,500 would be a doubtful matter. At his age, though, the claimant was not judged likely to exhaust his assets during the remainder of his life, assuming that he maintained his previous spending pattern. Thus, his age, combined with his assets, served to disqualify him.

(3) The question of income loss. The board debated whether the claimant's relinquishment of his business and consequent loss of income was a function of the criminal offense or of an intention to retire anyway. The attorney representing the claimant argued that the applicant was "physically unable to continue" and that his wife was "a neurological case." The board's own physician had not made a judgment on this matter, and the board members themselves were not able to resolve the precise contributions of age and offers to the present condition of the claimant.

Taking all the circumstance into account, the board voted to affirm the original rejection of the claim. They added the proviso that they would entertain a request to reopen the matter at a later date should causation be more precisely established or should new

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expenses arise which were obviously the outcome of the criminal action.

The lawyer for the claimant persistently pleaded the equity merits of his client's case. He granted that the couple was financially solvent, but argued that to deny them compensation was to penalize a lifetime of frugal and modest existence. This, he insisted, would not be "fair." He emphasized that he himself was receiving no fee for this case. He said that his insistence was the product of a genuine desire to see justice done. The board members listened sympathetically, but remained unmoved.

Case No. 2

The claimant was an elderly woman who had been the victim of a mugging. At first, she had maintained that she had no assets. When questioned further, she had granted that she had a savings account totaling $11,000. The board member responsible for the case said that the woman had at first been uncooperative. On the advice of a neighbor, apparently, she had originally concealed her savings, and only later told the investigator about one of her two bank accounts. The award had been denied, the member said, to force her to explain her situation more adequately.

The applicant, accompanied by her brother, was noticeably apprehensive. She responded to the initial question about the discrepancies in her financial statements with a rather blank look at the board chairman and then a helpless pleading look at her brother. The board seemed tolerant and patient and stressed in a kindly manner that they only wanted to know the truth and were not interested in why the woman had lied or what she was trying to accomplish. A board member noted: "We're not out to nail anyone. We just want to get the facts so we can make a proper decision."

The applicant, however, was not readily put at ease. She remained visibly anxious as she tried to respond to questions. The board decided, when they had heard her out, to review the case later, after they had received income tax statements, a doctor's report on surgery, both past and present, necessitated by the crime, and medical verification of the woman's crime-related disability. Still unconsoled, the woman, as she was leaving the board room, blurted: "I feel like a criminal."

Numerous other cases were discussed by the board members

during the review sessions, although they did not involve personal appearances by the claimants. Our field observer, after two days of attendance at the board meetings, had the following impressions:

> "[T]he Commissioners . . . are without exception genuinely interested in obtaining the facts of the situation and they demonstrate an *abundant* tolerance for the problems of applicants. . . .
>
> "During the proceedings of a full Board hearing questioning is very informal, and open-ended. The Commissioner who originally decided the case is given implicit responsibility for explaining the case to others, introducing claimants to the rest of the Board and asking questions of the claimant. He acts generally as a liaison between the Board and the claimant.
>
> "None of the Commissioners felt overly bound by rules or procedures to the extent of being made to make an inequitable ruling when the way is open to do 'justice' for the applicant. One is impressed with the *individualization* of the entire procedure.
>
> "The issues of innocence and serious financial hardship stand out as especially critical determinants of eligibility. The Board's rulings on these issues are always arbitrary and subjective. (Take care not to equate 'arbitrary' with 'unjust.') Subjective considerations of how *frugally* one has conducted his financial affairs, the *manner of living* to which he has become accustomed, the *wisdom* of his action when he became a victim of a crime, his *intentions* (commercial, educational, vocational) subsequent to the crime, his background and direction at the time of the crime, the *genuineness* of his stated need for compensation, and the *sincerity* of his whole presentation all weigh heavily—though they defy measurement—in the final disposition of the case.
>
> "The opportunity for abuse is great. The Board remains vulnerable to possible injustice and political abuse. The danger is not presently manifest, however, in view of the genuine concern of current commissioners for dealing justice to those who come before it. In fact, the absence of clearcut lines of eligibility sometimes allows the Board to do greater justice than might have been done by rigid standards." [148]

The foregoing observations represent, of course, the kind of remarks that may be made about most administratvie agencies whose discretion may or may not be used to advance those ends desired by the legislature and by the public. The value and vitality of the administrative process has been intensely argued for many decades now. The concern here is to spell out again, with particular

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[148] *Id.*, Sec. V, "Incidental Notes and Observations," pp. 1-2.

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reference to a new and special program, some of the relevant issues and to present some field observation conclusions on how the process seems to work in a specified jurisdiction.

Applicants' Responses

Since the proceedings of the board in terms of individual applicants are not matters of public record, it is impossible to identify and interview a random sample of persons who solicited assistance. Nevertheless, we were interested in the responses of some victims who had dealt with the board so that we could obtain a sense of how they felt the program had worked, in contrast to legislative and board-member impressions of what was being accomplished.

To assist us, the board chairman provided the names of ten persons, about half of whom had succeeded and half who had failed in their applications. This is obviously not a random sample. We were told that it was entirely up to the applicants as to whether they would talk with us. Ultimately, all those contacted agreed to cooperate. The uniformly held goodwill toward the work of the board that we found is not unimpressive testimony that at least for some segment of its clientele, the board renders a service that is deeply appreciated and well thought of.

One of the most interesting persons interviewed was the husband of a seventy-year-old mugging victim. In his working days, the husband had served as a lobbyist for the United States and New York State Chamber of Commerce. He had, in fact, been opposed to the victim-compensation bill when it came before the legislature, though he had taken no official position on the matter.

His experiences with the board, he said, had been revelatory, and he now favors expanding its scope both financially and in terms of its coverage. He said that he had found the board the antithesis of what he normally expected from a government agency. "What seemed as if it might be an albatross on the neck of the New York taxpayer," he remarked, "has turned into a real blessing." He found that the board made "refreshingly simple" demands; the forms were not elaborate or complex, and the entire matter was handled with ease, without problems, without delays. In comparison, the claimant cited Medicare papers, which he found burdensome and difficult. His overall summary was highly laudatory:

> "I'm an old hand at dealing with government bureaucrats. I have fought, bled, and died with bureaucrats for all my business life, so that I am

> very used to putting things in 'bureaucratese.' Comparing the Victim Compensation program with other bureaucracies, I would say it is much less involved, very simple, and very easy to deal with. Perhaps, it's just that they're new and Parkinson's Law hasn't had the change to operate yet. . . ." [149]

A taxicab driver who had been turned down by the board when he recovered his losses under the workmen's compensation law still had no complaints about his treatment. Like several other applicants we talked to, he found the forms a little annoying, somewhat too nosy in regard to his financial resources, but this was only a mild irritation, something he had rather expected. Like many of the persons interviewed, he favored extension of awards to cover "pain and suffering" and thought that the program ought to be publicized more thoroughly. He had heard of it from a friend who, on his part, had learned of the board from a lawyer.

A young victim of a gang assault had only praise for the board's work. He had received a lump-sum payment of somewhat more than $500, and said of the board, "Well, here's an agency that really does something to help." In contrast, he was thoroughly put out with the criminal justice system itself, maintaining that he had spent all morning waiting to sign a complaint against his assailants before a judge who had to witness the signature. The judge, he thought, seemed totally preoccupied with other matters, and his seemed only a rubberstamp operation, hardly necessitating the long wait. He had also been annoyed with the police, who he thought "obnoxious" in their probes into whether he had been drinking or had in any way provoked the attack against himself.

From the case of a sixty-one-year-old security guard, blinded and permanently disabled in an assault, we hear the kind of claimant gratitude that the board would like to find among all successful applicants and the kind of response that board members say gives special meaning to their job. This man thought that the claim "couldn't possibly have been executed in a shorter period." He said that without the board's help, he would not have been able to keep his house, and that he "would never have been able to make it."

As a final illustration, there is the case of a German immigrant, who had been very seriously wounded by his neighbor after a series

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[149] *Id.*, Sec. III, p. 18.

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of altercations that extended back over many years. The German family was particularly aggrieved at the slowness with which they said the criminal justice system had operated. On the other hand, they felt that the Criminal Victims Compensation Board had done a very good job on their case. The investigator, they thought, had been a "real gentleman." Payments were said to be timely and prompt. Interestingly, the wife had been forced to give up her job in order to nurse the husband after he left the hospital. Such services were not reimbursed by the board, though the hiring of a professional nurse probably would have been covered. The family maintained, when discussing this, that they did not want money for the wife; she said that she considered it her "duty" to take care of her husband.

Program Costs

The New York crime-victim-compensation program has been in operation longer than any other similar operation in the United States, with the exception of that in California. The California approach to compensation for crime victims, however, has undergone one drastic revision during its lifetime and, since its inception, has been marked by severe fiscal malnourishment as well as an approach that most kindly can be called unsatisfactory.[150] More than anything else, in fact, the California victim-compensation program has served as an object lesson to be used by commentators to point out the kinds of arrangements to be avoided.

Cost figures from New York, therefore, represent the best source of information about expenses likely to be involved over time in operating a program of crime-victim compensation. To be sure, New York is hardly typical of the nation, particularly in regard to the volume of crime in New York City, but reported crimes (and these are the only kind that count for compensation purposes, although the existence of compensation may ultimately reduce the level of unreported crime in a jurisdiction) can be extrapolated and then adjusted. More significant, perhaps, is the consideration that expenses for such things as medical care and salaries (which are compensable when lost through victimization) tend to be greater in New York than in most other parts of the country.

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[150] See, e.g., Shank, "Aid to Victims of Violent Crimes in California," 43 So. Cal. L. Rev. 85-92 (1970).

Therefore, the New York figures might reasonably be regarded as toward the high side. Also, in other jurisdictions, administrative costs, including board member salaries and expenses, are likely to be somewhat less.

The most comprehensive analysis of New York costs is that conducted by the Program and Management Evaluation Division, Office of Operations Support in the Law Enforcement Assistance Administration of the U.S. Department of Justice. The division first produced a document for inclusion with the Senate hearings on victim compensation which took place in March,[151] and then revised some of its figures and published them in a separate study issued on April 25, 1972.[152]

The claims history of New York is indicated in Table III. Table IV provides the LEAA calculation of the incurred costs of the New York program from its inception through fiscal year 1972, with the 1972 figures representing an estimate of costs. Table IV also indicates the cost to the federal government if the proposed

Table III.

NEW YORK CLAIMS HISTORY

Claims	*FY 1969*	*FY 1970*	*FY 1971*
Awarded	220	336	458
Disallowed	202	490	632
Deferred	97	103	10
Total	519	929	1,100
Awarded			
Protracted	28	33	49
Deaths	22	34	44
Lump sums	170	269	365
Average Annual Grants			
Protracted	$4,071	$4,071	$3,450
Deaths	$3,000	$3,000	$2,040
Lump sums	$1,410	$1,410	$1,930

[151] U.S. Senate, note 50 *supra,* at 719-754.

[152] U.S. Dep't Justice, Program and Management Evaluation Div., Office of Operations Support, Law Enforcement Assistance Administration, *Analysis of S. 2994, Victims of Crime Act of 1972* (Staff Study 1972).

Table IV.

NEW YORK STATE-INCURRED COSTS

	FY '67	*FY '68*	*FY '69*	*FY '70*	*FY '71*	*FY '72 (est.)*
Awards						
Grants	$ 1,500	$ 55,665	$386,585	$678,000	$1,243,174	$1,765,080
Adm. Costs	33,000	199,000	236,000	270,000	328,000	421,064
TOTAL	$34,500	$254,665	$622,585	$948,000	$1,571,174	$2,186,144
Federal share at 75%	$25,875	$190,998	$466,938	$711,000	$1,178,380	$1,639,608
Per capita						
New York	$0.0019	$ 0.0140	$ 0.0341	$ 0.0519	$ 0.0862	$ 0.1204
Federal	0.0014	0.0105	0.0256	0.0389	0.0647	0.0903
Administrative Costs Per Claim		$1,015.30	$ 454.72	$ 293.47	$ 205.77	$ 206.00

75 percent subvention program were to be enacted. Most striking in Table IV is the growing cost of the program on a per-capita basis, with the figure rising from about a cent and a half per person in 1968 to almost 12 cents per person in 1972.

Future Directions

The performance of the New York Crime Victims Compensation Board, measured against the yardstick of the legislation and resources which constitute its mandate, has been very good. Measured by other standards, including its own agenda for service to the victim community, it has done well under the circumstances. Measured by the need which is the rationale for victim-compensation programs, the members of the board would probably be the first to concede that it has hardly scratched the surface.

The board has carefully structured its administrative apparatus to make efficient adjudications, with a minimum of red tape, for victims of crime who are aware of the program, who qualify under the Act, and who make applications for compensation. Its forms are clear. They are good models for eliciting the kinds of information necessary to determine jurisdiction and for quantification in dollars of the losses which are compensable under the Act. Its procedures are relatively free of legalisms; they are conducted humanely and with compassion.

Most of the problems of the New York program stem from the

basic incompatibility between the stated legislative purpose to compensate crime victims and the legislative architecture and budget allocations which (1) limit eligibility to some victims of violent crime, (2) severely limit the amounts of compensation which can be paid to this narrow class of eligible victims, and (3) make it difficult for large parts of the eligible constituency to be aware of the benefits which are available.

The most troublesome administrative problems arise out of the requirement that serious financial hardship be demonstrated. This requirement is clearly a major factor in the cost of administering the program, compelling difficult investigative and adjudicative efforts, and providing a substantial basis for victim dissatisfaction with both the substance and procedure of the program. We are not convinced, balancing extra costs of administration against savings in awards, that the money savings realized by the needs test are as great as the legislature hoped—without even addressing the intangible costs of constituent frustration and diversion of administrators' efforts and ingenuity to abating the effects of this requirement.

Community awareness of the program's existence is an important area for improvement. It is clear that there is not a high level of awareness of this program among the general victim population. Even assuming that only a small percentage of victims can meet the needs test, the pecuniary loss requirement and other provisions of the Act, the disparity between reported violent crimes and applications for compensation is still so great that it compels the conclusion that law-enforcement agencies having direct contact with victims do little to inform victims of their possible rights under the Act.

In the event federal victim-compensation legislation is enacted, providing grants-in-aid for 75 percent of approved funding in state victim-compensation programs, the present New York program should reap maximum benefits. If federal legislation does materialize, it may not mean that the costs of the New York program will be cut by 75 percent, since heightened national consciousness stemming from federal legislation will probably cause at least some rise in claims. The projected federal needs test would be roughly parallel to the existing New York standard, and there would be no federal contribution toward awards which do not comply with that standard. If legislative consideration were given to elimination of

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the needs test and raising maximum compensation to the projected $50,000 federal maximum, federal contributions to those awards within federal guidelines could more than make up for additional costs that might be incurred. That the federal government will pick up part of the costs is not, of course, a justification for assuming additional obligations. But if the legislature is in accord with the clear direction of the board, to move away from a needs test if at all possible, the possibility of supplemental funding should certainly be taken into account.

New York has the largest and most active victim-compensation program in the United States. It has had to meet and structure answers to a broad range of problems which will confront administrators of any new programs. This experience has made it a basic resource for expertise, and precedents, for both existing and future programs—state and federal. It can be expected to continue in this role.

North Dakota Law Review, Spring, 1972

WHAT ABOUT THE VICTIMS?
COMPENSATION FOR THE VICTIMS OF CRIME

I. INTRODUCTION

In recent years the American people have become increasingly concerned with the problem of crime. They are constantly reminded of this ever-growing problem by daily accounts in the news media. Every year the problem seems to grow larger while effective solutions seem as distant as ever.[1]

One of the ideas currently coming into its own in reaction to this situation is that of compensation to the victims of crime. This note will discuss some of the reasons for the growing popularity of compensation schemes, the historical developments in the area, and the adequacies of present methods of aiding victims. Various plans in existence both here and abroad will be analyzed and compared and, finally, suggestions on what should be included in a workable compensation scheme will be presented. It should be stressed that the scope of this note is limited to the personal injury victims of crime. Property losses due to crime are not included because most people have property insurance of some form.

That crime in America is a major problem is effectively demonstrated by the fact that "law and order" has been a major, and occasionally dominant, issue in elections at all levels of government for the last several years. A second indicator is the increase in legislation to deal with crime and related problems. Acts such as the *Omnibus Crime Control and Safe Streets Act of* 1968[2] have put new emphasis on strengthening law enforcement.[3]

A related area has been the rights of criminal defendants. A trend is clearly evident in judicial decisions of recent years to broad-

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1. On Aug. 31, 1971, the Federal Bureau of Investigation released the annual crime statistics for 1970. "U.S. Crime Increases 11 per cent" the headline stated. The report went on to state that 1970 marked the end of a decade in which reported offenses nearly tripled. Grand Forks Herald, Aug. 31, 1971, at 1, col. 7-8.

2. Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C.A. ch. 46, §§ 3709-3781 (1968).

3. Under this legislation the Law Enforcement Assistance Administration was established under the United States Department of Justice. 42 U.S.C.A. §§ 3711(a), (b), (c) (1968).

en and strengthen the rights of those accused, as well as those convicted, of criminal acts.[4] Another issue of great contemporary concern is that of rehabilitation of persons convicted of criminal and anti-social conduct. The argument is made that society must do more than merely segregate and detain such people. Reformers argue that we must rehabilitate these individuals in order that they may be returned to a useful, productive, and noncriminal life in society.

The increasing rate of crime has led Congress to provide for property insurance for businesses and homes in high-crime areas who are unable to secure private insurance for their property.[5] This new and still-developing program is aimed at filling the gap left by the failure of private insurers to bear the risks involved in insuring property in such areas.

All of these problems certainly deserve attention. However, when the total picture is evaluated there appears an issue that has been blatantly ommitted until recent years[6]—the victims of crime. Who is concerned about the pain, the suffering, the cost, and even the lives of those people who are most directly effected by crime?

A leading commentator in the insurance law field, argues that society has a moral obligation to the victim of crime, especially the victim who suffers personal injury.[7] He further argues that one of the reasons men band together into a society is to secure mutual protection of life and property. When law and order breaks down so that a member of that society is injured, then society has a duty and an obligation to compensate that person who is victimized.[8]

It is the contention of this note that present methods of aiding the victim of crime for personal injuries are wholly inadequate. Before proceeding with an examination of existing plans,[9] a brief historical sketch is in order.

II. HISTORICAL DEVELOPMENTS

The concept of compensation for victims of crime is certainly not a new one. It has been practiced in various forms, since an-

4. Decisions such as Gideon v. Wainwright, 372 U.S. 335 (1963); Escobedo v. Ill., 378 U.S. 478 (1964); Miranda v. Ariz., 384 U.S. 436 (1966), are only a few of the landmark cases which have greatly increased individual rights in the criminal justice system.

5. Title XI (Crime Insurance) of the Housing and Urban Development Act, 12 U.S.C.A. § 1749 bbb (1968).

6. For an idea of the scope of the problem see the results of a survey made in Toronto in 1967 on the extent of damages and the value of civil suits in tort law in Linden, *Victim's of Crime and Tort Law*, 12 CAN. B.J. 17-33 (1969).

7. Denenberg, *Compensation for the Victims of Crime: Justice for the Victim as Well as the Criminal*, 1970 INS. L.J. 628, 634-35 (1969).

8. *Id.*

9. Plans are in operation in Great Britain; New Zealand; New South Wales, Australia; Saskatchewan, New Foundland, Alberta, and Manitoba, Canada & California, New York, Maryland, Hawaii, Massachusetts, and Nevada.

cient times.[10] For example, in Arabia, the transition from blood-feuds to compensation developed with the settling down of nomadic tribes into towns.[11]

Although the Anglo-Saxon legal system was originally based upon kinship, the effects of time, feudalism, and Christianity produced an elaborate system of compensation for victims.[12] Specific amounts of compensation were prescribed for various crimes. For example, if a man knocked out the front tooth of another, he was to make compensation in the form of eight shillings, while if a shoulder was disabled, the compensation was thirty shillings.[13]

Jeremy Bentham, an English philosopher of the eighteenth century, explained the concept this way:

> Has a crime been committed? Those who have suffered by it, either in their person or their fortune, are abandoned to their evil condition. The society which they have contributed to maintain, and which ought to protect them, owes them, however, an indemnity, when its protection has not been effectual.[14]

By the early nineteenth century concern for certain victims of crime was beginning to emerge in England. The Criminal Act of 1826, provided for compensation to be awarded to persons, whether injured or not, who were active in apprehending offenders.[15] By the Forfeiture Act of 1870, the courts were empowered to compensate, up to one hundred pounds, for property lost through the commission of a felony, but there was no provision for compensation for personal injury.[16]

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10. Sections 22-24 of the Code of Hammurabi (about 2250 B.C.) provides for compensation as follows: "If a man practice brigandage and be captured, that man shall be put to death. If the brigand be not captured, the man who has been robbed, shall, in the presence of God, make an itemized statement of his loss, and the city and the governor, in whose province and jurisdiction the robbery was committed, shall compensate him for whatever was lost. If it be a life that is lost, the city and governor shall pay one mana of silver to his heirs." R. HARPER, THE CODE OF HAMMURABI, KING OF BABYLON ABOUT 2250 B.C. 19 (1904).

Under the Mosaic Code the Hebrews provided for compensation for personal injuries. For example, if one man badly injured another, he was forced to compensate the victim for his loss of time as well as his medical expenses. Wolfgang, *Victim Compensation in Crimes of Personal Violence*, 50 MINN. L. REV. 224-225 (1965).

11. Wolfgang, *Victim Compensation in Crimes of Personal Violence*, 50 MINN. L. REV. 224, 225 (1965). For a good historical treatment of this subject *see* S. SCHAFER, RESTITUTION TO VICTIMS OF CRIME (1960).

12. Brock, *Victims of Violent Crime: Should They Be An Object of Social Effection*, 40 MISS. L.J. 92, 93 (1968).

13. Jeffery, *The Development of Crime in Early English Society*, 47 J. CRIM. L.C. & P.S. 647, 655-56 (1957).

14. THE WORKS OF JEREMY BENTHAM 589 (Limited ed. 1962) quoted in Siegel, *Compensation For Victims of Crimes of Violence*, 30 ALBANY L. REV. 325 (1966). It should be noted that Bentham suggests compensation for property damage as well as personal injury. This distinguishes his idea from the modern concepts under consideration here.

15. COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE, CMND. No. 1406, at 2-3 (1961) quoted in Schultz, *The Violated: A Proposal To Compensate Victims of Violent Crime*, 10 ST. LOUIS U.L.J. 238, 240 (1965).

16. *Id.*

In 1895, the irony facing the victims of crime was stated in a summary report of the Paris Prison Congress:

> . . . 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.[17]

Two noted Italian criminologists presented variations on the concept of compensation in the early part of the twentieth century.[18] Baron Roffaele Garofalo proposed that a state compensation fund should be established to indemnify the victims of criminal acts who have been unable to obtain compensation from the criminal.[19] Several years later, Enrico Ferri advocated that the state should impose as an element of the punishment process a strict obligation on the part of the offender to pay damages to his victim.[20]

The concept of compensation then seemed to lie quiet at this stage for a number of years until 1959,[21] when the government of Great Britain established a commission to examine compensation schemes. Their report[22] considered two different types of plans which paralleled the Italian schemes:[23]

> In the first, which was broadly similar to the United Kingdom's Industrial Injuries Scheme, weekly payments were to

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17. SUMMARY REPORT, THE PARIS PRISON CONGRESS (1895) quoted in Sandler, *Compensation For Victims of Crime—Some Practical Considerations,* 15 BUFFALO L. REV. 645, 646 (1966).

18. *Compensation To Victims of Violent Crimes,* 61 N.W. U.L. REV. 72 (1966).

19. In a paper read by M. Roffaele Garofalo at the International Penitentiary Congress of Brussels in 1900, he states:

> I come to the last question,—that of a State fund to insure a partial reparation to the person who has been unable otherwise to obtain compensation for his injury. This fund ought to be constituted from the fines paid by convicted offenders.

R. GAROFALO, CRIMINOLOGY 434-35 (R. Millar transl. 1914).

20. E. FERRI, CRIMINAL SOCIOLOGY 509-15 (J. Kelly & J. Lisle transl. 1917).

21. Miss Margery Fry, a noted English advocate of penal reform during the 1950's, had begun to focus new attention on the concept. She wrote numerous articles and books drawing public attention not only to the need for penal reform, but also to the inadequacies of existing remedies open to victims of crime to secure compensation. Since Miss Fry was of the opinion that modern society, with its increasing emphasis on the reformative aspects of punishment, had lost sight of the damage done to the victims of crime, she proposed a scheme of State compensation to those who suffered personal violence at the hands of criminals. Her major work in this area was AIMS OF THE LAW (1951). Chappell, *Compensating Australian Victims of Violent Crime,* 41 AUST. L.J. 3, 4 (1967).

An often cited example by Miss Fry was the case of a man, blinded as a result of a crime, who was awarded 11,500 stg. compensation for his injury. The two assailants were convicted and ordered to pay the victim five shillings weekly. In order for the victim to collect the final installment he would have "to live another 442 years." Fry, *Justice for Victims,* The Observer Newspaper (London), July 7, 1957, at 8, col. 2. Reprinted in 8 J. PUB. L. 191 (1959).

22. CMND. No. 1406, *supra* note 15, at 3. [Hereinafter referred to as CMND. No. 1406].

23. *See* p. 480 *infra.*

be made to persons who suffered injuries as a result of a crime of violence, and in addition, payments might be made to dependents of persons killed. The second scheme was one in which the victim, or dependent of a deceased victim, of a crime of violence, could make a claim against the Home Secretary similar to the claim for damages which he could already make against the wrongdoer under existing law. Entitlement to compensation was to be decided by the courts unless a settlement was reached out of court. The Home Secretary was to have the right to recover from the wrongdoers as much as possible of any compensation awarded to the victim.[24]

This report generated considerable discussion within both governmental and public circles in Great Britain. By 1964, a plan was finally proposed and adopted for an experimental, non-statutory, crime compensation scheme.[25]

III. ALTERNATIVE METHODS OF COMPENSATION

Municipal Corporation Liability

In the past, as a general rule, sovereign immunity had protected federal, state and municipal corporations from liability.[26] Today there has been a trend toward holding governmental units liable for their negligent performance of proprietary functions.[27]

Immunity persists, however, where the governmental body is negligent in performing a governmental function such as police or fire protection. Police protection is a general duty owed to the public at large, but its negligent performance creates no right of action in the individual citizen.[28] One exception to this rule is the failure of a municipality to protect a person to whom it owes a special duty of protection created by notice, actual or constructive, of potential injury.[29]

24. Chappell, *supra* note 21, at 5.
25. COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE, CMND. No. 2323 (1964). [Hereinafter referred to as CMND. No. 2323]. *See* discussion p. 480 *infra*.
26. Note, *Compensation for Victims of Crime*, 33 U. CHI. L. REV. 531-35 (1966).
27. *E.g.*, Scheele v. Anchorage, 385 P.2d 582 (Alas. 1963); Holytz v. Milwaukee, 17 Wis. 2d. 26, 115 N.W.2d. 618 (1962); Hargrove v. Cocoa Beach, 96 So. 2d. 130 (Fla. 1957).
28. Covey, *Alternatives to a Compensation Plan for Victims of Physical Violence*, 69 DICK. L. REV. 391, 392-93 (1965). For municipal nonliability to the general public for failure to provide police protection *see e.g.*, Steitz v. Beacon, 295 N.Y. 51, 64 N.E.2d. 704 (1945); Betham v. Philadelphia, 196 Pa. 302, 46 A. 448 (1900).
29. In Schuster v. N.Y., 5 N.Y.2d. 75, 154 N.E.2d. 534 (1958), decedent supplied police with information leading to the arrest of a criminal with a national reputation. Schuster's actions were widely publicized and he was given police protection. This protection was later withdrawn over his objections. Schuster was killed by unknown persons and his administrator brought suit against the City of New York for wrongful death. The New York Court of appeals held that a special duty of police protection was due to Schuster because of his informer status. The negligence in not meeting this duty made the city liable. Covey, *supra* note 28, at 393-94.

Damages Recoverable in Civil Actions

Probably the most obvious method of compensating the victim of crime is a civil suit against the perpetrator. The victim can seek damages in tort for the injuries he has suffered.

There are two problems with this method. Often such crimes are committed under such circumstances that the victim cannot identify his assailant. Even if identification is made, there are numerous instances in which the offender is never apprehended.

The second problem with civil suits against offenders is that frequently the offenders lack financial ability to pay damages. Criminals have never been an affluent class.[30] Furthermore, when an offender is apprehended and imprisoned and/or fined, his capacity to satisfy a judgment is further diminished, leaving little available for relief to the victim.

In short, the belief that a civil action is a practical means of compensation for injuries fails to take into account the limitations imposed by the fact that many offenders are unidentified, or if identified, are too poor to pay.[31]

Penal Fines and Prison Wages

Another alternative occasionally suggested is the use of penal fines in addition to incarceration, or in lieu thereof, as a condition of probation.[32] One commentator suggests that where prisoners receive more than a nominal wage for their labor in prison, or are on some form of work-release program, a portion of those earnings should be directed to the victim for restitution and compensation.[33] He further argues:

> Such a program aids in the rehabilitation of the prisoner by teaching him a skill which can be used upon his release. In addition, the state is saved expense in guarding the prisoner . . . and in providing compensation to the victim. Governmental involvement to the extent of providing wages to the criminal during imprisonment and distributing a portion to the victim is justified because the government's removal of the criminal from his usual employment precludes attachment of his wages by the victim. If the criminal is to be paid for his labor, the victim should not be forced to wait until the criminal's release before restitution can be obtained.[34]

30. Note, *Compensation for Victims of Crime*, 33 U. CHI. L. REV. 531, 535 (1966).
31. For a good discussion of the related problem of evidence in such a civil action, *see* Covey, *supra* note 28, at 398-400.
32. There are isolated examples of the use of property restitution in criminal actions, but none of reparation or compensation for personal injury to the victim of criminal violence. Covey, *supra* note 28, at 400.
33. Lamborn, *Remedies For The Victims of Crime*, 43 S. CAL. L. REV. 22, 31 (1970).
34. *Id.*

Such a program appears workable on paper but it is not particularly practical as the following quotation illustrates:

> Any plan in which prison wages were used as compensation has proven ineffective. Generally such wages are negligible, and in fact, few prisons can employ many prisoners. Most United States prisons are never able to employ over fifty per cent of their prisoners. In addition, the prisoner may have a family which needs whatever money he earns in order to keep them from becoming public charges.[35]

Private Insurance

A system of private insurance has been proposed to compensate the victims of crime. It is argued that a state compensation plan is not only unworkable, but incapable of public acceptance in the near future because of that stolid independence or fear of governmental paternalism and a practical reluctance by many to help those who can help themselves.[36]

With such formidable obstacles with which to contend, it is suggested that a plan of compensation through the purchase of private insurance by citizens who wish to protect themselves from the losses resulting from injuries sustained as a result of criminal violence. Also proposed is "legislation prohibiting the exclusion of crime victims from the benefits of existing coverages;" the issuance of a "major occupational" policy, to more adequately cover loss of income, to complement basic accident policies; and the drafting of "pain and suffering" riders to be attached to existing policies.[37]

The most obvious difficulty with such proposals is that the class of people most subject to violent crime is almost precisely that class or group of persons who cannot afford, or do not see the need for, such insurance—namely, the poor. This is analagous to the situation already existing with regard to health insurance. The people most in need of such insurance to protect themselves from the ever increasing costs of medical care are the poor and underprivileged. Those who are least able to pay for health insurance, are, in turn, most in need of medical attention.

The second objection to this scheme is that the victim would have to bear the cost, at least of the premium payments, to protect himself from the anti-social, criminal activities of another. If

35. Floyd, *Massachusett's Plan To Aid Victims of Crime,* 48 BOSTON U.L. REV. 360, 361 (1968). For further discussion of the use of prision wages as compensation as well as the use of restitution as a condition of probation or parole *see* Schultz, *The Violated: A Proposal to Compensate Victims of Violent Crime,* 10 ST. LOUIS U.L.J. 238, 243-45 (1965).

36. Starrs, *A Modest Proposal to Insure Justice for Victims of Crime,* 50 MINN. L. REV. 285, 291 (1965).

37. *Id.* at 309.

these activities are anti-social, which is generally agreed, then shouldn't society bear the cost of compensating the victim, when government, which is the agent of society, fails in its duty to protect citizens from injury by criminal violence? Presently, the victim, through payment of taxes, helps to pay the costs of apprehending, prosecuting, and punishing the criminal. Is it just to also make him pay for insurance to protect himself for loss of income, payment of medical expenses and other injuries suffered?

IV. EXISTING COMPENSATION PLANS

Great Britain

One of the first serious attempts made to compensate the victims of criminal injury by a government was in Great Britain. A commission published a White Paper entitled *Compensation for Victims of Crimes of Violence*.[38] This document accepted the principle ". . . that the victims of crimes of violence should be eligible for some compensation for personal injury at the public expense. . ."[39] Once having accepted that principle the White Paper proceeded to outline a plan to implement a program to deal with the problem.

It must be noted that the government of Great Britain did not accept the premise "that the State is liable for injuries caused to people by the acts of others."[40] Rather, compensation was to be paid *ex gratia*, that is by the grace of the government, not based on any "legally enforceable right."[41] The White Paper further stated that "the public does, however, feel a sense of responsibility for and sympathy with the innocent victim, and it is right that this feeling should find practical expression in the provision of compensation on behalf of the community."[42]

The White Paper established an administrative body, the Victims of Crimes of Violence Compensation Board, to administer the scheme. It provided for six members of the Board, all of whom must be legally qualified, to be appointed by the Home Secretary and the Secretary of State for Scotland.[43]

> The scope of the plan is fairly broad.
> The applicant must have suffered *personal* injury directly attributable either (1) to a criminal offense or (2) to an arrest or attempted arrest of an offender or suspected offend-

38. CMND. No. 2323, at 3.
39. *Id.* at 4.
40. *Id.*
41. Foulkes, *Compensating Victims of Violence*, 52 A.B.A.J. 237, 238 (1966).
42. *Id.* at 237. One of the unique features of the British plan, as compared to later ones, is its nonstatutory basis; that is to say, it has not been established by an act of Parliament but rather by administrative arrangement. Of course, Parliament has approved the expenditure of funds used for compensation payments.
43. CMND. No. 2323, at 4-5.

> er or (3) to the prevention or attempted prevention of an offense or (4) to the giving of help to any constable who is engaged in arresting or attempting to arrest an offender or suspected offender or attempting to prevent an offense.[44]

The White Paper did not attempt to specify a comprehensive list of crimes of which the victims will be eligible for compensation.[45] Rather, it stated that

> [p]ersonal injury may arise from a great variety of offenses, including crimes against property as well as crimes against the person. Broadly speaking, however, applications are likely to arise either out of offenses against the person, such as murder, manslaughter, assault and sexual offenses; from offenses against property accompanied by personal violence—principally robbery; or from personal injuries due to malicious damage to property, including arson.[46]

In addition to these provisions the scheme also lays down other requirements. The injury sustained must be an *appreciable* injury. An *appreciable* injury is defined as one that ". . . gives rise to at least three weeks' loss of earnings, or alternatively is such that not less than £50 ($140) compensation would be awarded."[47] Compensation is not permitted for a person injured by a member of the family living with the victim at the time of the injury.[48]

The procedures of the Board are fairly simple. An application for compensation must be made to the Board as soon as possible after the injury on a form provided. The Board then makes an investigation by a doctor of the Board's choice.[49] A single member of the Board reviews all of the information and makes a determination as to the amount of compensation.[50] "If the claimant is not satisfied with the amount awarded he can appeal to a tribunal consisting of three other members of the board."[51] The decision of the Board is final and is not ". . . subject to appeal or to Ministerial approval."[52]

What has been the experience of the Board? The latest available figures show that in the first twenty-five months for which the scheme

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44. Foulkes, *supra* note 41, at 238.
45. Other provisions require that the injury must have occurred in Great Britain or in a British vessel or aircraft. Passingham, *infra* note 47, at 435. Motoring offenses are excluded, unless the vehicle was used as a deliberate weapon. Foulkes, *supra* note 41, at 238.
46. CMND. No. 2323, at 5.
47. Passingham, *The Criminal Injuries Compensation Board*, 63 L. SOC'Y. GAZETTE 435 (1966).
48. Foulkes, *supra* note 41, at 238.
49. Passingham, *supra* note 47, at 435.
50. Walker, *Valuations of the Criminal Injuries Compensation Board*, 110 SOLICITOR'S J. 970 (1966).
51. *Id.*
52. CMND. No. 2323, at 5.

was operative the total of full or interim awards made was 2,161, the total of reduced awards made was 86, and the total compensation paid was £791,041 (approximately $2.25 million).[53]

Some portions of the British scheme do appear to be in need of improvement. One writer states that the awards of the Board are approximately one-half that which would be awarded by a civil court in similar cases.[54] He notes that the procedures of the Board need some revision in order to be more equitable to the claimants.[55] Suggested improvements are that more information be given to the claimant to indicate the basis for the award; in cases where the compensation is likely to be over £300 ($900) the evaluation be made by two members of the Board, rather than one; improvements in the claim form to elicit more useful information, especially in the area of pain and suffering; and elimination of the practice of the Board's solicitor appearing to argue against the claimant.[56] Finally, it has been suggested that an independent tribunal should be established to handle appeals by the claimant, rather than the present system of appeal to a three-member panel of the Board.[57]

New Zealand

New Zealand was the first nation to establish a compensation plan.[58] Although the New Zealand compensation plan is roughly similar to the British scheme, there are some major differences.

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53. Passingham, *supra* note 47, at 435. Some sample cases follow:
Case A. 339: Man aged 48. Right eye destroyed: large haematoma on left eye: five deep lacerations on face: multiple bruising and abrasion: artificial eye and permanent disfigurement. Award 2,500.
Case A. 323: Widow aged 56. Comminuted fracture of right radius. Off work 3 months. Considerable residual wrist stiffness to be expected. Applicant may be unable to continue with her employment as milliner. Award 430.
Case A. 337 S. Woman aged 39. Cafe' Assistant. Slashed with knife from left ear to the mouth.
Permanent disfiguring scar. Award 550.
Walker, *supra* note 50, at 970. *See also* Rothstein, *State Compensation for Criminally Inflicted Injuries*, 44 TEX. L. REV. 50-51 (1965) for further data on the kinds of crimes and the nature of the victims.
54. Walker, *supra* note 50, at 970.
55. Walker, *supra* note 50, at 970. Some of the problems which arise result from a number of factors such as:
(1) The board refuses to give to a claimant copies of any medical reports which the board has obtained, and thus the claimant (and his advisor if he instructs one) does not know the real extent of the injury and its future effect upon him.
(2) The board, when it tells the man of the award, makes it quite clear that if the claimant does appeal against the award made by the single member, the three-member tribunal can reduce or take away altogether the award against which he is appealing, and that
(3) at the hearing of the appeal the board's own solicitor appears and takes part in the hearing and can oppose the appeal and argue against the claimant, and that
(4) no legal or medical costs can be awarded by the board, so that whatever may be the outcome of the appeal the claimant has to pay the costs of his own legal representation and the costs of obtaining his own medical evidence.
Walker, *supra* note 50, at 970-971.
56. Walker, *supra* note 50, at 197.
57. Walker, *supra* note 50, at 971.
58. Criminal Injuries Compensation Act of 1963, N.Z.L.R. c. 134 (1963).

The New Zealand plan is likewise not based on a theoretical argument that the state is at fault or owes an obligation to the victims of criminal violence. Rather, payment by the state to victims of crime is justified ". . . because compensation is socially desirable."[59]

Administration of the program is by a Crimes Compensation Tribunal composed of three members appointed by the government.[60] The procedure for application and consideration of claims is similar to the British plan. If the claimant will not accept the initial determination, a hearing is held before the full Tribunal.[61] Legal counsel is present during all hearings, although ". . . it is not clear whether he is there to protect the State Treasury or to see that the social purpose of the statute is fulfilled by protecting the rights of the claimants."[62]

The New Zealand plan is more comprehensive than the British scheme in its scope of coverage in that it expressly provides for pain and suffering. Another major difference between the British and New Zealand plans is New Zealand's provision allowing compensation to victims even if the offender is a member of the victim's family.[63]

Under the Criminal Injuries Compensation Act in New Zealand a claimant must have been injured as a direct result of one, or more, of twenty-seven crimes specifically listed in the statute.[64] "Compensation is limited to persons directly injured and their dependents—bystanders are not covered."[65] As in the British plan, compensation may be awarded even though the offender is not apprehended, or, if apprehended, not prosecuted or found not criminally responsible.[66]

The impact of the legislation in New Zealand has apparently been slight. From 1964 to the middle of 1968 only 57 awards totaling

59. Weeks, *The New Zealand Criminal Injuries Compensation Scheme*, 43 S. CAL. L. REV. 107, 109 (1970).

60. Criminal Injuries Compensation Act of 1963, N.Z.L.R. c. 134, § 4(2) (1963). The chairman must be an attorney with at least seven years of practice. Terms of office are for five years with reappointment possible. Provisions are made for removal from office, resignation, deputy members, oath of office, and expenses and remuneration.

61. Weeks, *supra* note 59, at 110.

62. Weeks, *supra* note 59, at 110.

63. Weeks, *supra* note 59, at 112. The only exception to this is for pain and suffering which cannot be compensated if the offender is a member of the victim's family, or living with the victim. Criminal Injuries Compensation Act of 1963, N.Z.L.R. c. 134, § 18(2)(a)(b) (1963).

64. The twenty-seven crimes, taken from the Crimes Act of 1961, are: rape, attempt to commit rape, sexual intercourse with girl under twelve, indecency with girl under twelve, indecent assault on girl between twelve and sixteen, indecent assault on woman or girl, indecent assault on boy, indecent assault on a male, murder, attempt to murder, manslaughter, wounding with intent, injuring with intent, injuring by unlawful act, aggravated wounding or injuring, aggravated assault, assault with intent to injure, assault on a child (or by a male on a female) common assault, disabling, discharging firearm or doing dangerous act with intent, acid throwing, poisoning with intent, infecting with disease, endangering transport, abduction of woman or girl, kidnapping. Criminal Injuries Compensation Act of 1963, N.Z.L.R. c. 134, Schedule (1963).

65. Weeks, *supra* note 59, at 111.

66. Criminal Injuries Compensation Act of 1963, N.Z.L.R. c. 134, § 17(6) (1963).

$24,227.20 were made.[67] One writer suggests several reasons for the lack of use of the plan:

> First, the scheme is not well publicized and few New Zealanders know of or understand the victim compensation provisions. . . the hearings are not publicized and persons undertaking research are not permitted to review the written opinions of the Tribunal. Second there are existing alternate benefits to which a victim is entitled.[68]

In 1966, a *Royal Commission to Inquire into and Report upon Workers' Compensation* was established. Its mission was to study the inadequacies of Worker's Compensation.[69] The resulting report made a number of sweeping recommendations including elimination of the fault system in personal injury, elimination of the common law tort actions relating to personal injuries, and elimination of both the Criminal Injuries Compensation Act and the Worker's Compensation Act.[70] "In essence, the proposal was to establish a comprehensive state run social insurance scheme."[71] The report's recommendations have been hotly debated but none has been put into effect.

New South Wales, Australia

The Criminal Injuries Compensation Act became effective in New South Wales on January 1, 1968.[72] In effect, the Act provides for the criminal courts of New South Wales to administer the compensation plan. When the offender is brought to trial, the court, upon conviction, may direct payment of compensation to the vicim by the offender.[73] If the offender is unable to pay, or is acquited, the victim is given a certificate to be presented to the Under Secretary who forwards the claim with his report to the Treasurer. The Treasurer evaluates the claim and if the circumstances justify an award, the payment is made to the claimant.[74] Certificates are not awarded for claims of less than $100.[75] "To avoid what would otherwise be a very serious weakness in the scheme, the New South Wales Attorney-General has announced. . . that *ex gratia* payments . . . will be made to victims of unsolved crimes."[76]

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67. Weeks, *supra* note 59, at 115.
68. Weeks, *supra* note 59, at 115.
69. Weeks, *supra* note 59, at 116.
70. Weeks, *supra* note 59, at 118.
71. Weeks, *supra* note 59, at 118.
72. Criminal Injuries Compensation Act 1967, N.S.W. Act. No. 14 (1967).
73. Chappell, *The Emergence of Australian Schemes To Compensate Victims of Crime*, 43 S. CAL. L. REV. 69, 72 (1970).
74. *Id.* at 72-73.
75. Criminal Injuries Compensation Act of 1967, N.S.W. c. 14, §§ 3(b) and 4(2) (1967).
76. Chappell, *supra* note 73, at 73. In a statement to Parliament the Attorney-General stated, "[I]t is thought that the experience of both the undersecretary to the department

Crimes included under the plan are "any felony, misdemeanor or other offense. . . "[77] Injury is defined as "any bodily harm and includes pregnancy, mental shock and nervous shock."[78] The courts must take into account contributory behavior of the victim, including the victim's relation to the offender.[79]

Because of the newness of the New South Wales plan, there are no official reports upon which to base an evaluation of their operational efficiency or equity. However, the structure of the plan as outlined in the statute seems to point out some inherent problems. First, the process is a "cumbersome and unwieldy. . . joint arrangement"[80] of the criminal courts and the executive branch of the government. Second, the participation of the courts "almost inevitably causes long delays in payment."[81] It may be many months or years before an offender is brought to trial and convicted or acquitted, before an application for payment can be made and even then there is a further delay before final payment is made by the Treasurer. Third, there is ". . . an equally obvious danger that the administration of justice will be impeded if responsibilities of a civil nature are placed upon the criminal courts."[82] Fourth, there is a problem facing the courts in deciding on the criteria to be used in assessing damages suffered by the victim, as few aids are available in the statute.[83]

Canadian Provinces

At the present time four provinces in Canada have compensation plans. All four plans are essentially the same. All provide for a three-member board to be appointed by the Lieutenant Governor in Council of their respective provincial governments.[84] Procedures of all four boards are similar to that of the British and New Zealand plans. Unlike the British plan, all four Canadian provincial statutes specify a list of crimes covered by the legislation. This list is essentially the same as the one provided in the New Zealand statute.[85] Only Saskatchewan has provision for payment for pain and suffering of the victim.[86] All four provide payments both for pecuniary loss of

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and the Treasurer in relation to crimes and compensation to victims where convictions have occurred or acquittals have taken place, taken together with police reports of investigations, will serve as standards and guides on which payments could be assessed when a crime is unsolved."

77. Criminal Injuries Compensation Act of 1967, N.S.W. Act 14, § 3(a) (1967).
78. *Id.* at § 2.
79. *Id.* at § 8(3).
80. Chappell, *supra* note 73, at 79.
81. Chappell, *supra* note 73, at 79.
82. Chappell, *supra* note 73, at 80.
83. Chappell, *supra* note 73, at 82.
84. The Criminal Injuries Compensation Act of 1967, Sask. c. 84, § 3(2) (1967); The Criminal Injuries Compensation Act of 1969, Alta. c. 23, § 3(2) (1969); The Criminal Injuries Compensation Act of 1970, Man. c. 56, § 2(2) (1970).
85. *See* note 64 *supra*.

income and expenses incurred. While both Manitoba[87] and Saskatchewan[88] exclude payment to victims where the offender is a member of the victim's family, Alberta and New Foundland are silent on this point. Since Saskatchewan is the only province to have a compensation plan in effect for some time, the experience of all the provincial boards cannot be evaluated at this time.[89]

A proposal has been put forward by the Legislation Committee of the Canadian Corrections Association[90] for uniform legislation to be adopted by all provinces in Canada. It would ". . . provide a scheme of compensation in each province to cover loss or injury sustained by any person, regardless of his financial position, as the result of any crime under the Criminal Code of Canada."[91] The really unique feature of this proposal, however, is that it would cover property losses as well as pecuniary losses and expenses incured.[92] Furthermore, it would not restrict compensation to victims of *violent* crimes, maintaining that "[n]on-violent crimes can cause more serious and permanent hardship to the victim and his dependants than those crimes of violence that cause only temporary physical injury."[93] Limitations in most of the existing schemes which exclude compensation for injuries resulting from motor vehicle offenses or where the offender is a member of the victim's family would not be included in this proposal.[94] Such a proposal is indeed far-reaching and comprehensive. Precisely because of that, it is doubted whether it will be adopted in its present form.

California

The first American jurisdiction to enact a victim's compensation plan was California.[95] The original plan, enacted in 1965, was highly restrictive and, in the words of one commentator, ". . . the worst enacted anywhere. . ."[96] The main defect in the program was ". . . the equation of compensation for criminally inflicted personal injury with the poor laws, usually referred to in political and polite circles as the welfare laws."[97] The plan was to be administered by the Welfare Department, which was to "establish criteria for pay-

86. The Criminal Injuries Compensation Act of 1967, Sask. c. 84, § 11(e) (1967).
87. The Criminal Injuries Compensation Act of 1970, Man. c. 56, § 6(2)(c) (1970).
88. The Criminal Injuries Compensation Act of 1967, Sask. c. 84, § 10(1)(c) (1967).
89. *See Awards of the Crimes Compensation Board*, 33 SASK. L. REV. 209-228 (1968) for full copies of three actual judgments made in Saskatchewan in 1968.
90. Teeney, *Compensation For the Victims of Crime: A Canadian Proposal*, 2 OTTAWA L. REV. 175-183 (1967).
91. *Id.* at 181.
92. *Id.*
93. *Id.* at 182.
94. *Id.*
95. CAL. WELF. & INST. CODE §§ 1500.02 and 11211 (West 1966).
96. Childres, *Compensation for Criminally Inflicted Personal Injury*, 50 MINN. L. REV. 271, 279 (1965).
97. *Id.* at 280.

ment of aid under this chapter, which . . . shall be substantially the same as . . . provided for aid to dependent children. . . ."[98] The Department indicated that the plan was " 'improperly placed' and announced that its mandate would be strictly construed in light of the Department's philosophy of providing assistance to those in 'need'."[99] The 1965 act was also vague on what constitutes a crime of violence, lacked criteria for determining damages suffered, provided no payment for expenses incurred, and made no requirement that the victim report his injury to the police in a specified time period.[100]

In 1967, the legislature amended the 1965 provision.[101] The main effect was to transfer control of the program from the Welfare Department to the State Board of Control.[102] In spite of the shift, "[t]he Welfare influence and the concomitant notion that financial need ought to be a requisite to compensation has continued . . . ."[103] Other problems of the current plan are the requirement that the Attorney General investigate all claims and report to the Board,[104] the requirement that the victim suffered pecuniary loss,[105] and the requirement that no award can be made in excess of $5,000.[106]

It is clear that the California compensation plan is in need of a great deal of revision if it is to ever compare favorably with plans in other states.[107]

New York

New York adopted its compensation plan in 1966 and it became effective March 1, 1967.[108] The plan adopted is basically similar to plans in the Canadian provinces and New Zealand. A Crimes Victim Compensation Board is established, consisting of three members appointed by the Governor and confirmed by the Senate.[109]

98. CAL. WELF. & INST. CODE § 1500.02 (West 1966).
99. Shank, *Aid to Victims of Violent Crimes in California,* 43 S. CAL. L. REV. 85, 87 (1970).
100. Childres, *supra* note 96, at 279-80.
101. CAL. GOV'T. CODE §§ 13960-13966 (West Supp. 1971).
102. Shank, *supra* note 99, at 89. The State Board of Control is an administrative board that is charged with pedforming audits for the Legislature in the consideration of claims against the state. Therefore, compensation for criminal violence injuries claims receives only a portion of the Board's attention.
103. Shank, *supra* note 99, at 89.
104. CAL. GOV'T. CODE § 13963 (West Supp. 1971).
105. CAL. GOV'T. CODE § 13962 (West Supp. 1971). This provision ignores, therefore, the victims of sexual crime where no pecuniary loss may result, but compensation might be justified on other grounds.
106. CAL. GOV'T. CODE § 13963 (West Supp. 1971).
107. An Associated Press story printed in the Grand Forks Herald, Aug. 23, 1971, at 9, gives some statistics on the California plan. It notes that in four years of operation the plan has paid 406 claims totalling $677,282. It also discusses the problems of informing the public of the program as well as the qualifications of need by the claimant.
108. N.Y. EXEC. LAW §§ 620-635 (McKinney Supp. 1971).
109. N.Y. EXEC. LAW § 622(1) (McKinney Supp. 1971). This section also provides that the members must have been admitted to the practice of law in New York for ten years and that no political party shall have more than two members on the board.

Claims must be filed within 90 days after the commission of the crime, although the Board may, upon good cause, extend that period to not more than one year.[110] The minimum allowable claim is $100 in expenses or loss of at least two weeks wages.[111] A single member of the Board reviews the claim and determines the award;[112] however, claimants have the right to appeal to the full Board.[113] Only the state attorney-general or comptroller may appeal to the courts.[114] Awards may not be made to persons ". . . criminally responsible for the crime upon which a claim is based or an accomplice of such a person or a member of the family of such persons. . . ."[115] Claims are limited to a maximum award of $15,000.[116]

Similar to the California plan, New York provides for denial of a claim if it is found "that the claimant will not suffer serious financial hardship. . . ."[117] Even with such a restriction the New York Board awarded 997 claims amounting to slightly less than $1,000,000 in its first year of operation.[118]

Other States

At least four other states have adopted compensation plans: Maryland (1967),[119] Hawaii (1967),[120] Massachusetts (1968),[121] and Nevada (1969).[122] With the exception of Massachusetts, these additional state plans are basically similar to the New York plan adopted in 1966.[123]

Massachusetts, like New South Wales, provides that the district courts shall ". . . determine and award compensation to victims of crimes."[124] Thus, Massachusetts is the only American jurisdiction, and only the second jurisdiction anywhere, to use the courts to administer the program. Claims are filed with the clerk of the district court along with a fee of five dollars.[125] The attorney general is

110. N.Y. EXEC. LAW § 625 (McKinney Supp. 1971). Most of the other plans provide a one year time limit, *e.g.*, the Canadian provinces all provide a one year limit. Chappell, *supra* note 73, at 79.
111. N.Y. EXEC. LAW § 626 (McKinney Supp. 1971).
112. N.Y. EXEC. LAW § 627 (McKinney Supp. 1971).
113. N.Y. EXEC. LAW § 628 (McKinney Supp. 1971).
114. N.Y. EXEC. LAW § 629 (McKinney Supp. 1971).
115. N.Y. EXEC. LAW § 624 (McKinney Supp. 1971).
116. N.Y. EXEC. LAW § 631(3) (McKinney Supp. 1971).
117. N.Y. EXEC. LAW § 631(6) (McKinney Supp. 1971). For a good general review of the New York plan and a discussion of some possible problem areas *see* Note, *Compensation For Victims of Crimes of Violence: New York Executive Law Article* 22, 31 ALBANY L. REV. 120-127 (1967).
118. Vilatti, *A Year's Experience With the Massachusetts Compensation of Victims of Violent Crime Law*, 1968 to 1969, 4 SUFFOLK U.L. REV. 237, 261 (1969).
119. MD. ANN. CODE art. 26A (Supp. 1971).
120. HAWAII REV. LAWS ch. 351 (1968).
121. MASS. GEN. LAWS ANN. ch. 258A (Supp. 1971).
122. NEV. REV. STAT. ch. 217 (1969).
123. The one major exception is in Nevada where the program has been placed under the control of the State Board of Examiners, rather than establishing a separate board. NEV. REV. STAT. § 217.030 (1969).
124. MASS. GEN. LAWS ANN. ch. 258A, § 2 (Supp. 1971).
125. *Id.* at § 4.

charged with making an investigation and reporting his findings to the court.[126] The statute is silent on whether a claimant may appeal the decision of the court.[127]

Federal Proposals

A number of proposals for compensation to victims of crime have been made at the federal level in recent years. Senator Ralph W. Yarborough[128] introduced a bill based largely on the New Zealand plan in 1965.[129] The plan would apply only to the limited areas of general federal police power, namely "the 'special maritime and territorial jurisdiction of the United States,' and the District of Columbia."[130] It is based on the theory "that the right of the victim to compensation from the state arises from the failure of the state to protect him from crime."[131]

To administer the program a Violent Crimes Compensation Commission would be established, composed of three members appointed by the President for eight-year terms.[132] The proposed plan would compensate for any injury (or death), loss of earning power, pain and suffering, and reasonable pecuniary loss.[133] A list of criminal acts covered by the plan was 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."[134] Maximum compensation is limited to $25,000, but no minimum is established.[135]

A plan for the District of Columbia[136] was successfully cleared through the Senate in 1970 as a part of a broader anti-crime measure, but was later deleted.[137] During 1971 several comparable bills have been introduced.[138]

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126. *Id.*
127. In the first year of operation in Massachusetts, 71 claims were filed with five awards made. The remaining 66 were either denied or pending. Vilatti, *supra* note 118, at 260.
128. Former U.S. Senator from Texas.
129. S. 2155, 89th Cong., 1st Sess. (1965). Similar bills were introduced in the House of Representatives during the same session by at least five different legislators. *See* Yarborough, S. 2155 *of the Eighty-Ninth Congress—The Criminal Injuries Compensation Act*, 50 MINN. L. REV. 255, 256 n.3 (1965).
130. *See* Yarborough, S. 2155 *of the Eighty-Ninth Congress—The Criminal Injuries Compensation Act*, 50 MINN. L. REV. 255, 258 (1965).
131. *Id.*
132. *Id.*
133. *Id.* at 261.
134. *Id.* at 263.
135. *Id.* at 264. Included in the article is an Appendix which includes the major portions of S. 2155 for reference. *See* Childres, *supra* note 96, at 271-278 for a critical analysis of the Yarborough proposal. Senator Yorborough also introduced similar legislation in 1967 and 1969. S. 646, 90th Cong., 1st Sess. (1967) and S. 9, 91st Cong., 1st Sess. (1969).
136. S. 2936, 91st Cong., 1st Sess. (1969).
137. *Public Pay For Crime Victims: An Idea That Is Spreading*, U.S. NEWS AND WORLD REPORT, April 5, 1971, at 42.
138. The major bill is S. 2994, 92nd Cong., 1st Sess. (1971), introduced by Senator John L. McClellan. This bill is a consolidation of several proposals which have been under

Model Act

A model act has been prepared and published by the *Harvard Journal on Legislation*.[139] The model act has attempted to include the best features of the various plans in existence. It essentially follows the New Zealand plan discussed earlier.

There are some defects in the model act, however. The provision for a $25 deductible to relieve spacious and petty claims is not necessary.[140] It is highly doubtful that many claims would be submitted for such a minor sum. Furthermore, those persons who have suffered a loss, even for less than $25, are still just as much victims of government's failure to protect them as is the person with a claim of more than $25.

Secondly, the model act limits compensation to "two-thirds of the loss of earnings resulting from total or partial physical incapacity for work".[141] Such a limitation tends to defeat the purpose of compensation—namely, to assist the victim to regain the position he was in prior to the injury. The Compensation Commission should have the flexibility to award as little or as much as is needed to fully compensate the victim for his loss. In some cases that may require paying one hundred per cent of lost wages. Furthermore, the ceiling of $500 a month on loss of earnings is not realistic.[142] It fails to take into account the real needs of the victim in supporting himself and his family and, more importantly, the effect of inflation. Again, the Commission should have the flexibility to make awards based on the actual loss and the real needs of the victim.

Another provision of the model act limits payment for pain and suffering to $500.[143] The commentary notes that this limit is set because it is difficult to objectively determine awards in this area.[144] It is certainly true that objectivity in this area is difficult to achieve. However, it is conceivable that there may be cases where $500 is totally inadequate. For example, the victim of a rape may deserve much more than the suggested limit in order to rebuild her life, above and beyond any medical expenses which would be compensated by this section.[145]

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consideration by a subcommittee of the Senate Judiciary Committee. The bill provides for a three member board to administer the program. Up to $50,000 could be awarded for medical bills, loss of earning power and funeral expenses. Compensation would depend on financial need. The program would apply primarily to areas of federal police power, but has a provision "under which the federal government would pay 75 percent of the cost of compensation programs established by the states in accord with federal standards." Grand Forks Herald, Dec. 28, 1971, at 16.

139. *A State Statute to Provide Compensation For Innocent Victims of Violent Crimes*, 4 HARV. J. LEGIS. 127 (1966).
140. *Id.* at 138, § 301.
141. *Id.* § 302.
142. *Id.*
143. *Id.* § 302(2).
144. *Id.*
145. *Id.*

Although there is provision for legal counsel for the victim to be present at any hearings which may be held,[146] there is no provision for payment of counsel's fees. Provision should be made for payment of such fees to prevent the victim from having to pay the fees out of the award granted. This reduction of the award in effect would result in the failure of the victim being returned to the position he was in prior to the injury suffered. Also, if a victim requests a hearing to appeal an initial denial of an award it seems fair that he should not have to bear the cost of representation in addition to the loss already suffered from the injury.

V. CONCLUSION

United States Senator Mike Mansfield, in introducing a bill in the Senate to compensate the victims of criminal violence, stated:

> The point has been reached where we must give consideration to the victim of crime—to the one who suffers because of crime. For him, society has failed miserably. . . . Society has an obligation.
>
> When the protection of society is not sufficient to prevent a person from being victimized, society then has the obligation to compensate the victim for that failure of protection.[147]

That people do suffer from criminal violence, and that society does fail to protect many of its members from such injury, is obvious when one considers the rampant increase in crime in recent years and the resulting flood of oratory and remedial legislation. "We have passed a lot of laws directed at the criminals, and now we need to turn our attention to the innocent victims of criminals."[148]

Once the need for compensation is recognized, the next step is to consider what are the vital elements of any plan established to accomplish this goal. This note has presented an over-view of most of the plans in existence to date. There are some obvious differences in the operation of the various plans currently in operation. Some of these differences are of no real significance to the effective operation of a compensation plan. However, a few do go to the heart of a compensation scheme. Therefore, it would seem proper to discuss the critical or essential elements necessary to establish an efficient, yet equitable scheme to compensate the victims of criminal violence:

146. *Id.* at 142, § 502(d).
147. *Public Pay For Crime Victims: An Idea That Is Spreading,* U.S. NEWS AND WORLD REPORT, April 5, 1971, at 40.
148. *Id.*

1. *Theoretical Basis.* A compensation plan should be based on the premise that the government has failed in its function of protecting the members of the society from injury by criminal elements. To predicate compensation on a benevolent spirit of government is to ignore the need for government to improve its ability to deal effectively with this problem. None of the existing plans are based on such a theory. Rather, they are based on the premise of a benevolent government.[149]

2. *Scope of Plan.* Compensation should be available to all victims of crime within the state.[150] This would include victims who are members of the offender's family. There should be no requirement to prove need because, as noted above, compensation should be based on government's failure to protect the victims, rather than on a basis of financial status. Rather than attempt to specify crimes covered, an effective plan should be similar to the British scheme which covers all personal injuries resulting from any criminal action.[151] Compensation, however, should be limited to personal injury and/or death. Property losses should be excluded because of the additional costs plus the greater availability and use of property insurance. Apprehension and/or conviction of the offender should not be required for awarding compensation; rather, the only burden that should be on the victim is to prove injury.[152]

3. *The Nature and Amount of Compensation.* All expenses incurred such as medical bills and loss of wages should be covered.[153] Provisions should also be made for compensation for pain and suffering,[154] especially in the area of sexual offenses. Awards should be reduced, however, by amounts received from insurance, other governmental compensation plans, and payments made by the offender. The possibility of contributory acts by the victim should also be considered in determining awards.

4. *Administrative Machinery.* A compensation plan should not be placed in the courts for administration for two major reasons.

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149. *See* p. 480 *supra* for reference to the *ex gratia* basis of payment in Great Britain. New Zealand's plan grants compensation because it is "socially desirable", p. 483 *supra.*

150. *See* Section 201 of the Model Act for a good provision which covers both persons within the state, resident and non-resident, as well as citizens of the given state injured in another state. *See supra* note 139, at 136.

151. CMND. No. 2323, at 5.

152. This is one of the major faults with the New South Wales, Australia, plan which generally depends on compensation as a part of the conviction process of the offender. *See* p. 484 *supra.* The better method would be to adopt a provision similar to that in Great Britain which states "Compensation will be payable whether or not the offender has been brought to justice." CMND. No. 2323, § 14, at 5.

153. All of the existing plans have limits of some form on loss of wages that will be compensated, minimum losses to qualify, or maximum amounts for the total award made. The more preferable system is to leave such matters to the discretion of the Compensation Commission in order to give them the maximum flexibility to deal with the individual case in the most equitable manner.

154. *See e.g.,* the New Zealand provision, N.Z.L.R. c. 134, § 18(e) (1963).

First, the courts are already overburdened and this would only add to the problem. Second, such a system is inevitably much slower in awarding compensation to victims in need of *immediate* relief. The plan should provide for an administrative board of three to five members appointed by the governor with the advice of the legislature. Terms should be fairly long, six to eight years and staggered, to assure some degree of continuity.[155] At a minimum the chairman should be learned in the law in order to insure equitable proceedings.[156] Rules and procedures should be flexible and relatively simple in order to facilitate the process for the victims.

5. *Operation of Plan.* An effective compensation plan should provide for a speedy system of compensation. Forms should be kept as simple as possible to facilitate use by individuals. There should be requirements of timely notice by the victim, or an agent, to the police as well as cooperation with the police in attempting to apprehend the offender.[157] All claims should be filed within one year of the occurrence of the injury, except in cases involving special circumstances where the Board could waive this requirement.[158] Provisions should be made for an individual to have legal counsel if desired, as well as for reimbursement for fees of such counsel equal to ten per cent of the award made.

Procedures should be designed to insure immediate review of a claim, thirty days notice to claimant of the sufficiency of the claim, and timely notice of the right to appeal to the Board and the courts. Claimants should be guaranteed the right of confidentiality, especially in sexual cases.[159] An annual report to the legislature should also be required, which would include not only statistical data on the awards made, but also a statement on the policies of the Board.[160]

6. *Judicial Review.* Provisions should be adopted guaranteeing to the claimant the right of judicial review after he has appealed to the full Board,[161] in order to provide the necessary checks on administrative actions.

A compensation plan with the above mentioned elements would be an effective and efficient method of providing relief to the unfortunate members of our society who suffer so grievously at the

155. *See* Sections 401-403 of the Model Act, *supra* note 139, at 139-140.
156. The British and New York plans require all members of the Commission to be legally qualified. The other plans are either silent on the issue of legal qualifications or only require one or two members to be legally qualified [*see e.g.*, MD. ANN. CODE art. 26A, § 3(a) (1970)]. The best plan is New Zealand's which requires the chairman to meet legal qualifications, but is silent on the other members. *Supra* note 58, at § 4(2). There is merit in having at least one member of the commission from a non-legal background.
157. *See* Section 203(1) of the Model Act, *A State Statute to provide Compensation For Innocent Victims of Violent Crimes*, 4 HARV. J. LEGIS. 127, 137 (1966).
158. *Id.* § 203(2).
159. *Id.* § 506, at 145.
160. *Id.* § 507, at 145.
161. *Id.* § 602, at 146.

hands of criminals due to the failure of government to adequately perform its most important function—protection of society and its members.

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COMPENSATION TO VICTIMS OF CRIME: AN ANALYSIS

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INTRODUCTION

> Punishment, which, if it goes beyond necessity, is a pure evil, has been scattered with a prodigal hand. Satisfaction, which is purely a good, has been dealt out with evident parsimony.
>
> *Jeremy Bentham*

The scheme of compensation by society for victims of crime is not a new concept. As early as 2270 B.C. the Code of Hammurabi included provisions for compensation in certain cases.[1] In the nineteenth and twentieth centuries, however, and especially in the United Kingdom and in the United States, the interests of victims of crime have been virtually ignored, and the law has concerned itself only with "the interests of an entity usually labeled 'society', [which] are protected against the transgressions of the individual criminal . . . ."[2] The victim of crime, then, has been neglected; and it has been only in the past decade that first a number of writers, and later several national and state legislatures, have turned their attention to this subject.

The purpose of this paper is to provide an analysis, in historical context, of the concept of compensation for victims of crimes. This analysis includes a discussion of the various problems which the concept raises, a survey and criticism of current schemes of compensation, and several proposals for undertaking a satisfactory compensation program.

HISTORY

In the earliest history of mankind, it may be presumed that men existed in a Hobbesian state of nature, "solitary, poore, nasty, brutish, and short." In such a society each individual, in his struggle for self-preservation, had to take the law in his own hands; "he alone

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* B.A., Johns Hopkins, 1967; J.D., Harvard, 1970.

1. HARPER (trans.), THE CODE OF HAMMURABI §§ 23, 24 at 19 (1904):
   > If the brigand be not captured, the man who has been robbed, shall, in the presence of God, make an itemized statement of his loss, and the city and the governor, in whose province and jurisdiction this robbery was committed, shall compensate him for his loss.
   >
   > If it be a life (that is lost), the city and governor shall pay one mara of silver to his heirs.

2. Editors, *Compensation for Victims of Criminal Violence: A Round Table*, 8 J. PUB. L. 191 (1959).

made the law, and he was the victim, the prosecutor and the judge in one person, also he himself carried out the punishment that took the form of revenge . . . ."[3] Each person, as victim, made his demands which reflected themselves in revenge or compensation.

With the formation of kin groups, tribes, and villages, the idea of collective responsibility emerged. Now each individual was part of a larger group, and the concept of "blood-feuds" between kin groups became the "criminal law". This slowly became a focus on loss to the group, and thus what came to exist was a law of torts and not of crimes.[4] If a kin group lost a member as a result of a murder by a member of another group, the former kin group was harmed, as they lost one man—one hunter, fisherman, or farmer. Thus the intent and the guilt of the perpetrator of the offense generally were ignored, and instead, the emphasis was on the objective result —the loss of one man. The kin group, confronted with this loss, made demands of reparation. The amount demanded would depend on several factors, the most prominent being the seriousness of the loss, and the social status of the person aggrieved. Wolfgang describes a typical system in a primitive society, the Ifugao in Northern Luzon:

> [T]he determination of damages involved five critical factors: the nature of the offense, the relative class positions of the litigants, the solidarity and behavior of the two kinship groups involved in the dispute, the personal tempers and reputations of the two principals, and the geographic position of the two kin groups. There were traditional scales of damages for various offenses.[5]

The purpose of compensation, then, was to restore balance in the communities, so that peaceful functioning would continue. The very idea of imprisonment surely would have seemed counterproductive, as the offender was needed by his kin group; compensation made much more sense. If the injury was not very serious, such as a wounding, and the loss to the group was less severe, then the sanction would often be payment by the offender of the cost of a funeral or the cost of caring for the victim until he recovered.[6] There emerged an

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3. S. Schafer, *The Victim and his Criminal—Victimology,* paper submitted to the PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE 4 (1967).

4. H. Silving, in *Compensation for Victims of Criminal Violence: A Round Table, supra* note 2, at 236.

5. M. Wolfgang, in *Compensation to Victims of Crimes of Personal Violence: An Examination of the Scope of the Problem, a Symposium,* 50 MINN. L. REV. 211, 224 (1966).

6. TALBOT, THE PEOPLES OF SOUTHERN NIGERIA 651-53. Quoted in MILNER, THE NIGERIAN PENAL SYSTEM 181 (1966). Milner also gives examples of compensation demanded for a wide range of less serious offenses: gifts of animals, food, money.

Other examples of the prevalence of compensation in our early history include: the statement in *Exodus* 21:18-19 that if a man badly injured another, the offender had to pay for the victim's loss of time and cause him to be healed; the passage in the ninth Book of the *Iliad* when "Ajax reproached Achilles for not accepting the offer of reparation made to him by Agamemnon.

accepted scale of compensation for crimes reflecting the loss to the victim and/or his kin group. In many parts of Africa this system began to change only recently as British influence brought about changes in the traditional laws. As late as 1967 a writer has suggested that the changes brought about may not lead to a more civilized criminal system:

> There is little evidence to show that greater justice will be obtained by keeping criminal and civil actions separate.[7]

The primitive criminal law was really a sort of tort law based on compensation to the victim. This was soon to change in Western societies, however, as the state began to play a larger part; and the concept developed that the community as a whole was harmed and had a right to reparation from the offender. Thus, the state began to administer the law and demanded two forms of compensation from an offender or his kin: what in England came to be called the "bot", or the victim's right to compensation, and the "wite", or payment to the state.[8] As the central power of the community increased, the share of the state increased culminating in the state monopoly of the right to receive payment, and the disappearance of the rights of the injured party. Now a breach of the peace began to be perceived as an offense against the "public order". The concept of "guilt" grew, and eventually the victim became totally excluded from the settlement of the criminal case. In theory the disappearance of compensation to the victim was supportable by a growing acceptance of "a more sophisticated view of criminal responsibility, which separated the consequence of the act from the guilt of the actor".[9] There appeared in the law a distinction between crime, involving an offense against the state, and tort, involving an offense against an individual.[10] The victim was left to pursue his civil remedy which, then as now, proved to be largely ineffective against the criminal. The net result was that "the discontinuance of damage payments to the victim of crime was the price that . . . society paid for a centralized system of criminal justice . . . ."[11]

Several nineteenth century reformers, in response to the diffi-

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He reminded Achilles that even a brother's death may be composed by a payment of money and that the murderer, having paid his fine, may remain at home free among his people." Wolfgang, *supra* note 5, at 225.

7. D. Brown, *The Award of Compensation in Criminal Cases in East Africa*, 10 J. AFRICAN L. 33, 38 (1967).

8. Comment, *Compensation to Victims of Violent Crimes*, 61 Nw. U.L. REV. 72, 79 (1966).

9. 40 ST. JOHNS L. REV. 67, 68 (1965).

10. As more sophisticated theories of criminology appeared, with the realization that many criminals were unable to pay fines, as increasing mobility made it difficult for families to be held to pay for a family member's offense, and as the concept of individual guilt gained acceptance, imprisonment became much more common than fines.

11. T. Feeney, *Compensation for the Victims of Crime: A Canadian Proposal*, 2 OTTAWA L. REV. 175 (1967).

culty of suing criminals, advocated a reestablishment of the rights of the victim. In England, the Forfeiture Act of 1870 provided that the courts could order a convicted felon to compensate the victim to a limit of £100. This was probably ineffective in most cases since the criminal was usually unable to pay. Similarly, an 1846 Massachusetts law provided that

> [i]f a person . . . is under indictment for [a] misdemeanor for which he is liable in a civil action, and the person injured appears before the court . . . and acknowledges that he has received satisfaction for the injury, the court . . . may in its . . . discretion, . . . discharge the defendant . . . .[12]

In Italy two penologists, Ferri and Garofalo, first advocated the establishment of a state fund derived mainly from criminal fines and profits of prison labor to indemnify victims of crimes. The aim of criminal justice, they advocated, should be reparation to the injured person.[13] With almost no exception their proposals were unheeded, and few voices were heard in support of such schemes until in 1957 Margery Fry's article "Justice for Victims" in *The Observer* rekindled an interest in the subject. Shortly thereafter various writers and committees began to publish proposals, and a decade later laws were passed providing compensation to victims of crimes of violence in Great Britain, New Zealand, and several of the United States. Much of the legislation was passed precipitously without sufficient consideration of the issues involved and without specifying on what basis the state was accepting responsibility for compensation for victims of crime. At this point, one should consider what basis exists, if any, for the acceptance of state responsibility, or even liability, for compensating victims of crimes.

Is the State Responsible?

The most extreme argument proffered for state responsibility is that the state should be held liable for injuries from crime. The argument is as follows: Due to the very nature of our legal system in general, and our system of criminal law in particular, the state has the duty of protecting its citizens and of providing effective remedies for wrongs. When a crime is committed, the state has failed in its duty of protection and subsequently should be held liable for the victim's loss. As one writer states the position:

> The state has undertaken the protection of the public against crime. It should therefore compensate the victims of crime, for every crime represents a failure by the state to perform its function of protection. In an affluent society . . . the case may be even stronger. . . . For an increase in crime seems to be a by-product of the affluent society, perhaps because in such a society the pro-

12. Mass. Gen. Laws, ch. 276, § 55 (1846).
13. Garofalo, Criminology (Miller transl. 1914). Ferri, Criminal Sociology (Miller transl. 1917).

> vision of public services on an adequate scale tends to be neglected.[14]

In the words of another writer:

> Society owes a duty to all its members to protect them from violence. It has certainly assumed total and complete responsibility for the punishment of criminals. Individual retribution cannot be tolerated in a civilized community. Vigilante groups have been outlawed. We may not carry concealed weapons. We must go unarmed in the streets. With an increasing crime rate and shamefully financed police departments, should we not look to the state for some compensation when injuries arise as a result of crime?[15]

Arthur Goldberg has made a similar argument which he couched in equal protection terms:

> The victim of a robbery or an assault has been denied the 'protection' of the laws in a very real sense, and society should assume some responsibility for making him whole.[16]

The argument for state liability is further buttressed by showing that when a criminal is apprehended and brought to trial, the state often invokes sanctions which interfere with the exercise of the victim's civil remedies. Society, in acting in furtherance of its interests of punishing, deterring, and rehabilitating the offender, interferes with the interests of the victim in obtaining compensation for his injury.[17] Thus, not only has the state failed in its duty to prevent the crime, but even after the crime has been committed, the state's actions continue to infringe upon the victim's right to restitution from the offender. It is submitted that having violated its duty of protection, the state should at the very least have an obligation to expedite the victim's receipt of restitution from the offender. Since the state prevents this, it should offer compensation as a substitute.[18]

A second view is that while not enough to create strict legal liability, the failure of the state's undertaking to prevent crime places it in a special relationship with a victim of crime who has relied on the state's protection for his safety. Many of the same considerations used to defend the position that the state is liable support this second view: we demand that people not go armed in the streets to protect themselves; we have outlawed vigilante groups; we have left

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14. P. Brett, *Compensation for Victims of Crime: New Zealand's Pioneer Statute*, 5 AUSTRALIAN LAWYER 21, 23 (1964).

15. E. Bushmann, *Let's Help the Innocent Victims of Crimes*, 23 J. Mo. BAR 18, 20 (1967). *See also* 111 Cong. Rec. 14031 (June 17, 1965) (remarks of Senator Yarborough).

16. A. Goldberg, *Equality and Governmental Action*, 39 N.Y.U. L. REV. 205, 224 (1964).

17. Note, *A State Statute to Provide Compensation for Innocent Victims of Violent Crimes*, 4 HARV. J. LEGIS. 127, 128 (1966). *See also* JUSTICE (SOCIETY), COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE 26 (1962).

18. Note, *Compensation for Victims of Crime*, 33 U. CHI. L. REV. 531, 533 (1966).

the punishment of the criminal to the state; we have told the people that they will best be protected if law enforcement is left to the government. And, "having encouraged our people to go out into the streets unprotected, we cannot deny that this puts a special obligation upon us to see that these people are, in fact, protected from the consequences of crime."[19] The analogy is to reliance in tort law, where if A places himself in a position where B is forced to rely on A for protection, A has a duty to protect B.[20] The argument is further supported by taking note of the "remarkable unresponsiveness of American institutions to the causes of crime,"[21] as well as by pointing out the absence of remedies available to the victim, this partly due to the state's policy in dealing with the offender.

A third view is that although there is no real fault on the part of the state, there is a sense of duty and a sense that the responsibility of the state at least exceeds that of the innocent victim. True, the argument goes, the criminal has the primary responsibility; and, if possible, he ought to repair the damage. Yet, often the criminal is not caught or he is poor; moreover, in some cases the state *is* partly responsible for non-recovery from the offender. The state is at least partially responsible and thus should compensate victims of crimes.[22]

Still another camp has argued for compensation to victims of crime on the "wheel of fortune" theory.[23] The argument here is that since the risk and exposure to criminal conduct are endemic in our complex society, it follows that everyone should contribute to the rectification of the harm visited upon the innocent victim of crime.[24] Since crime is inevitable in our society, by chance some members will be directly affected and some will not. In such a situation it is argued that "it is only fair that society as a whole should bear the cost . . . ."[25] To the argument that crime victims are no different from other unfortunates and should not be singled out for special treatment,[26] those espousing the "wheel of fortune" theory have several replies. First, it is said that victims of crime are in the peculiar situation of being submitted to tangible risks inherent

19. Remarks of Senator Yarborough, *supra* note 15. *See also* Comment, *Compensation to Victims of Violent Crimes*, *supra* note 8, at 75.
20. RESTATEMENT (SECOND) OF TORTS § 323 (1955).
21. R. Childres, *Compensation for Criminally Inflicted Personal Injury*, 39 N.Y.U. L. REV. 444, 456 (1964).
22. J. Covey, *Alternatives to a Compensation Plan for Victims of Physical Violence*, 69 DICK. L. REV. 391, 404 (1965). *See also* CONSERVATIVE POLITICAL CENTRE, VICTIMS OF VIOLENCE, A REPORT ON COMPENSATION FOR INJURIES THROUGH CRIMES OF VIOLENCE 6 (1962).
23. Feeney, *supra* note 11, at 178.
24. A. Broder, *State Compensation to Victims of Crime*, 2 TRIAL LAWYERS NEWS No. 5 at 1 (December, 1965).
25. Note, *supra* note 17, at 128.
26. F. Miller, in *Compensation for Victims of Criminal Violence: A Round Table*, *supra* note 2, at 204.

in a *collective* life.[27] This distinguishes the case of a farmer who falls from his ladder at home. Second, the reliance of the victim on government protection has already been pointed out. And third, it is argued that "[i]n our modern system of collective responsibility for sickness and injury, we have evolved a machinery for assuring compensation which could well be extended to injuries criminally caused, [as well as] to the man who falls from a ladder . . . at home."[28] Thus, we are rapidly moving in the direction of risk sharing, or "clubbing together for mutual protection;"[29] and this should include the victim of crime.

Yet another view is that we should compensate victims of at least some crimes, not out of any sense of responsibility or even fairness, but because we feel sympathy for the victim. This charitable impulse to help unfortunates is in the case of crime victims extremely strong due to the natural sense of outrage we feel about the plight of the sufferer. As the treatment of criminals has become relatively more humane, the public's concern with the victim has become even more marked.[30] In the words of a California State Senator:

> Although the state of California spends millions of dollars every year in the detention and care of criminals, the victims of these criminals are tragically overlooked. When, for instance, a woman is struck down by a robber on a city street, her assailant, when apprehended and convicted, is sent to prison where he is fed, housed, clothed and given any necessary medical treatment—all at state expense. The victimized woman, however, must bear any hospital and other expenses on her own, and may suffer additional economic hardship from temporary or even permanent loss of employment.[31]

This view is that just as we give welfare payments to those whose income falls below a certain point, we should, out of a sense of sympathy, compensate innocent victims of crime.

Finally, there is the view that victims of crime should not be compensated. A reason often given for this view is that such compensation would be a dangerous precedent, as the lawful extension would be compensation for all losses.[32] Another reason is that it is

27. Wolfgang, *supra* note 5, at 233.
28. M. Fry, *Justice for Victims*, The Observer (London), July 7, 1957, at 8. Reproduced in *Compensation for Victims of Criminal Violence: A Round Table*, *supra* note 2, at 192.
29. *Id.*
30. 18 STAN. L. REV. 266, 272 (1965).
31. Press Release, Office of Sen. McAteer, April 13, 1965. Quoted in G. Geis, *Experimental Design and the Law: A Prospectus of Research on Victim Compensation in California*, 2 CALIF. WESTERN L. REV. 85, 86 (1966). *See also* remarks of Senator Yarborough, *supra* note 15, at 14032:

> While society is weeping over the criminal, it is showing no such concern, indeed no concern, for the victim of his crime. Society is brutal toward the victims of crimes, not against criminals.

32. F. Miller, in *Compensation for Victims of Criminal Violence: A Round Table*, *supra* note 2, at 204.

inconsistent to compensate the victims of crime and not a farmer struck by lightning.[33] Also, the problem of funding the compensation program must be considered. In an age of rising costs and budget problems, a state which currently has problems providing even minimal educational programs might find itself hard pressed to take on additional financial obligations.

This is the potpourri of views regarding compensation for victims of crime. Where one comes out depends on one's own notions of state responsibility, of the existence of free will, of the duty owed by the society to its unfortunate citizens and countless other such factors. The present writer feels that, while there is not enough evidence or reason for holding that the state should be held strictly liable for injuries caused by crimes, a sufficiently strong case has been made for the view that the state should accept the responsibility, out of a sense of fairness as well as due to both the failure to protect the innocent victim and the interference with his tort rights. Holding the state liable would involve broad and sweeping implications.[34] Instead, one should opt for compensation on the ground of communal responsibility. Thus, the theoretical justification for compensation sufficiently elevates the position of the victim of crime above that of the normal welfare recipient or pensioner, while at the same time it requires no great philosophical revolution. whatever the theoretical basis, however, we should keep in mind that our objective is to solve a great social problem[35] and that the compensation programs do seem to have the support of the majority of our population.[36]

What Should be the Scope of Compensation?

Once the decision has been made to compensate victims of crime, the next problem is to define the area of compensation. Several questions need to be answered: What crimes are to be "compensable"? What victims should be excluded from compensation? What proof should be needed to obtain compensation? How should the damages be measured? This section will deal with these and related questions. The further question of what is the proper machinery for

33. 19 VAND. L. REV. 220, 223 (1965).

34. It's going pretty far to presume that the state is responsible for an individual who commits a crime at moment of high passion—such a program flies in the face of our conventional ideas of the state's responsibility.

Rep. Emmanuel Celler, quoted in The New York Times, March 25, 1964, at 18, col. 2.

35. K. Keating, *Compensation for Victims of Crime,* 39 N.Y. ST. B.J. 51, 52 (1967).

36. 62% of a 'representative group of American voters' would favor state compensation for the family of an innocent person killed by a criminal.

Gallup Poll, Press release, October 29, 1965. In Note, *supra* note 18, at 531.

administering the compensation scheme will be left for consideration in the next section.

Personal Injury v. Property Loss

Although in theory most of the arguments for compensating victims of crimes of violence also apply to victims of injury to property, this writer believes that any scheme for state compensation should be limited to injuries to the person. One obvious reason for this limitation is a practical one—a program which included compensation for property losses would be prohibitively expensive, and thus virtually impossible to carry out. Some writers have dismissed the whole idea of compensation on this ground, saying that since "any equitable compensation schemes . . . would have to cover the total amount of loss through crime,"[37] including property loss, anything short of this must be dismissed as inequitable. Such all-or-nothing views, however, are often obstacles to progress. As an Australian lawyer has stated:

> It may be said in criticism of these schemes that they represent a piece-meal approach and produce illogicalities. Such a criticism is difficult to refute, but the circumstance that some human miseries may go unrelieved is surely no reason for refusing to alleviate others.[38]

Aside from the practical financial problems, other differences exist between property loss and personal injury which lend support to a compensation scheme limited to the latter. First, the social effects of personal injury are generally more serious and usually involve many more implications and greater hardship to the victim and/or his family. Second, since most would agree that life and limb count far more than property, the victim of personal violence seems inherently more deserving of compensation.[39] Thus, public opinion would lend support to a limited scheme. Third, the risk of collusive or fraudulent claims would be so high with respect to property loss that it is doubtful that a system could be devised that could adequately screen the cases of fraud.[40] The risk of fraud or collusion is significantly lower where personal injury is involved, as few people would purposely break a leg or otherwise inflict injury on themselves for the purpose of obtaining compensation. A fourth reason for denying state compensation to victims of property crimes is the relatively low cost and widespread use of property insurance.

37. G. Mueller, in *Compensation for Victims of Personal Violence: An Examination of the Scope of the Problem, A Symposium, supra* note 5, at 218.
38. J. Barry, *Compensation Without Litigation*, 37 AUSTRALIAN L.J. 339, 347 (1964).
39. A. Samuels, *Compensation for Criminal Injuries in Britain*, 17 U. TORONTO L.J. 20, 23 (1967). *See also* JUSTICE (*Society*), *supra* note 17, at 4.
40. *Id.*

Any compensation scheme, consequently, should be limited to injuries to the person.

What Crimes Should Be "Compensable"?

A second problem is deciding what offenses should be covered by a scheme of compensation. Although it may seem obvious that there should be compensation in cases of murder or battery, there exist other crimes about which there might be disagreement. Some writers have suggested limiting compensation to victims of homicide, criminal assault, or rape.[41] Others have suggested a more inclusive formulation, with a schedule of offenses for which there would be compensation, such lists including crimes such as arson, rape, and buggery.[42] This is the approach adopted by the 1963 New Zealand law,[43] as well as the approach suggested by Senator Yarborough in a proposed compensation bill for the District of Columbia and other federally administered areas.[44] The advantages of this approach are three: First, it is easy to determine eligibility, and reduces the need for numerous determinations as to whether someone

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41. Childres, *supra* note 21, at 461.

42. The Conservative Political Centre in England suggests the following list:

murder
attempted murder
threats
manslaughter
wounding
assault
larceny from person
robbery
rape
buggery
indecent assault against women
unlawful intercourse
unlawful assembly
riot
escape
rescue (of prisoner)
resisting arrest
arson
smuggling

VICTIMS OF VIOLENCE, A REPORT ON COMPENSATION FOR INJURIES THROUGH CRIMES OF VIOLENCE 11, 12 (1962).

The report of the British section of the International Commission of Jurists suggests the following list:

murder
manslaughter
riot
unlawful assembly
arson
malicious damage to property
abandoning child under two years
assault on police officer
abduction
intimidation
larceny of the pesron
robbery
assault with intent to rob
possession of arms with intent to endanger life
rape

See JUSTICE *(Society), supra* note 17, at 29.

43. Public Act No. 134, 1963 (N.Z.).

44. S. 2155, 89th Cong., 1st Sess. (1965). The bill may be found in 111 Cong. Rec. 14033 (1965).

is or is not eligible under the law. Second, the list could easily be restricted, should experience deem it desirable to do so. Third, the dangers of fraud would be lessened if there is a delineation of compensable offenses.[45] An objection is the possibility of injustice to a deserving victim of an offense which happened to have been left out of the list.

Another suggestion has been that the law should compensate for injuries inflicted by "any crime in which there is a substantial possibility of serious injury . . ."[46] or by any "violent" crime. Others suggest compensating for personal injury suffered as a result of any "crime", thus concentrating more on the degree of injury than on its source.[47]

A problem presented by focusing on injury resulting from a "crime" is that it would seem to exclude injury inflicted by someone who lacks the capacity to commit crime, such as an infant or one who is mentally ill. Such exclusion would be the obvious result of measuring state liability by that of the offender. This is the case under the present law in Great Britain[48] where recently the Compensation Board rejected a six-year-old's claim for loss of an eye because the thrower of the stone that caused the injury was under ten years of age and under British law had no capacity to form criminal intent.[49]

Because we cannot predict which crimes will lead to personal injury, it seems that a listing of "compensable" offenses is undesirable. Moreover, limiting recovery to injuries from a "crime" leads, as has been seen, to injustice. The best solution is to define as a "compensable crime" any willful act or omission which, if committed by an adult, would be punishable as a crime.[50] This seems to be the only approach which will avoid seemingly inequitable results.

Who Is A "Victim"?

It is now appropriate to address the question of deciding who should be eligible to receive compensation. The first problem involved in this area is that very often the "victim" of a crime is just as "culpable" for his injury as is the person who inflicted the injury. As Wolfgang states it,

45. JUSTICE (*Society*), *supra* note 17, at 5.
46. *Supra* note 33, at 224.
47. Note, *supra* note 18, at 543.
48. Home Office, *Compensation for Victims of Crimes of Violence*, CMND. No. 2323 (1964).
49. P. Rothstein, *State Compensation for Criminally Inflicted Injuries*, 44 TEXAS L. REV. 38, 39 (1965).
50. For a similar provision, *see* Note, *supra* note 17, at 134, § 102(c) of the model act.

> In many cases, the victim has most of the characteristics of an offender; in some cases, two potential offenders come together in a homicide situation and it is probably only chance which results in one becoming a victim and the other an offender.[51]

Where the offense was a result of provocation on the part of the victim or where the victim aided in the perpetration of the crime that caused his injury, the injured party should not be eligible to receive compensation. However, the question of fault on the part of the victim will often be one of degree. The extremes are clear: the innocent person who is assaulted while walking along a street should be eligible; the victim whose "co-robber" injures him in an attempt to appropriate the whole loot should not be eligible. But what of the man who gives a person slight provocation? And what of the person who walks into a dangerous area of town with a new suit and a thick wallet? These are difficult questions to which it does not seem possible or desirable to give definitive answers. The most desirable solution would be to have a general section stating that nobody is eligible who provoked, committed, or aided in the commission of the crime. The compensation board (or court, depending on the type of system to be used) would then be free to determine the degree of culpability on the part of the victim and, based on this determination, it could disallow or lessen compensation.

Another area of controversy involves injury to a family. Those who argue against compensation in these cases give as a reason the possibility of fraud as well as the chance that the offender will benefit from his crime.[52] That the offender may benefit is of course true, yet this does not seem to the present writer enough to deny compensation to the injured person. And once the offender has been identified (and this is likely to happen as a result of the claim for compensation), he will be subject to trial, conviction, and punishment for the offense. The fear of fraudulent claims is also a serious matter. Yet, the outright exclusion of all inter-family claims seems an unwise solution to the problem. It would be wiser to combat the danger of fraud by a strong presumption against the validity of such a claim, leaving room for discretion to allow well-founded claims.[53] At the very most, any exclusion should not cover any cases other than those between spouses living together.[54]

Finally, it seems wise to allow compensation to survivors of the victims if the survivors have incurred a monetary loss as a result of the death.

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51. M. WOLFGANG, PATTERNS IN CRIMINAL HOMICIDE 265 (1958).
52. H. Wiehofen, in *Compensation for Victims of Criminal Violence: A Round Table*, *supra* note 2, at 211.
53. 78 HARV. L. REV. 1683, 1685 (1965).
54. *See* suggestion of the Conservative Political Centre, *supra* note 42, at 16.

What Damages Should Be Awarded?

At this point, it would be well to consider the question of the amount of compensation and how the payment should be made. The point that a legislature should remember in dealing with this question is that we are dealing with compensation for loss from an injury received as a result of a crime and not with merely easing misfortune through an extension of the welfare system. Thus, the California legislature made a serious mistake by placing their statute in the Welfare Institutions Code and by basing the support payments not on loss but on need.[55] Rather, it seems wiser to base compensation on actual loss, including out of pocket loss, loss through absence from work, pecuniary loss to the family if the victim has died, and any other pecuniary loss.[56]

Whether or not compensation should be given for pain and suffering is a controversial question. Some have argued against such compensation on the ground that such damage will often be very speculative and would provide opportunity for fraud.[57] Additionally, if one is primarily concerned with compensating actual loss, there is no need to compensate pain and suffering which, in itself, causes no pecuniary loss. Furthermore, if the cost factor is a problem in this type of compensation system, it could be lessened by disallowing recovery for pain and suffering. On the other hand, it can be argued that the pain and suffering can be just as real as actual physical injury, leaving little reason to refuse to give compensation for it. It would seem best not to rule out compensation for pain and suffering entirely but instead make it discretionary on the part of the board or court.[58]

It has seemed wise to most writers and legislatures, primarily from a practical standpoint, to set ceilings on the amount of compensation that can be awarded. The state could hardly afford to pay the family of a wealthy physician (or lawyer) the total pecuniary loss resulting from his death. One writer has suggested the average family wage as the maximum receivable for value of lost services.[59]

55. CAL. WELF. & INST'NS CODE § 11211 (West 1965) (repealed 1967):
> Aid shall be paid . . . if there is need . . . . The department shall establish criteria for payment of aid under this chapter, which criteria shall be substantially the same as those provided for aid to families with dependent children . . . .

56. *See, e.g.*, the New Zealand provision, Public Act No. 134, § 18 1963 (N.Z.). *See also* the Massachusetts provision, MASS. GEN. LAWS ch. 258A, § 5c 1967):
> Any compensation paid under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support resulting from such injury.

57. Note, *supra* note 18, at 552.

58. This is the approach suggested in the proposed statute of the Harvard Journal on Legislation, *supra* note 17, § 302. It is also the approach of the New Zealand statute, Public Act No. 134, § 18 1963 (N.Z.).

59. Childres, *supra* note 21, at 464.

The British statute limits compensation for loss of earnings to a figure twice the average industrial wage.[60] Although these provisions seem satisfactory, it would also seem wise to place a limit on compensation for pain and suffering. Moreover, any recovery through insurance should be subtracted from the amount to be compensated.

Compensation for crimes such as rape provide a thorny problem. It is here that the deciding body must be very careful both in screening fraudulent cases and in deciding whether to award compensation for pain and suffering. In these cases pregnancy would have to be considered an injury, and the full pregnancy and childbirth expenses should be compensated. As legal abortions become more common, the cost of the abortion should be compensated. Several other questions will arise with respect to the payment of damages, but these will be best dealt with in the next section.

THE MACHINERY FOR COMPENSATION

It has been argued that the most equitable manner of compensating a victim of crime is to have the offender provide the compensation.[61] This argument does have a natural appeal which is reflected in several United States statutes. 18 U.S.C. § 3651, for instance, provides that while on probation and among the conditions thereof, the defendant

> . . . may be required to make restitution or reparation to the aggrieved parties for actual damages or loss caused by the offense for which conviction was had . . . .[62]

This provision has been used mostly in cases involving tax evasion,[63] embezzlement,[64] and the sale of liquor at prices in excess of ceiling,[65] *i.e.*, crimes involving financial matters and where the offender is presumed to be able to afford the reparation. Such a law is limited to a certain type of case—a very minor part of the total number of crimes which directly injure others.

Another law dealing with restitution from the offender is an 1846 Massachusetts statute, which provides that

> [i]f a person is . . . [charged with a] . . . misdemeanor for which he is liable in a civil action . . . and the person injured . . .

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60. Home Office, *Compensation for Victims of Crimes of Violence*, § 22 (a), *Cmnd. No.* 2323 (1964).

61. F. Miller, in *Compensation for Victims of Criminal Violence: A Round Table*, *supra* note 2, at 203. *See also* VICTIMS OF VIOLENCE, *supra* note 42.

62. 18 U.S.C. § 3651 (1925).

63. United States v. Taylor, 305 F.2d 183 (5th Cir. 1962), *cert. denied*, 371 U.S. 894 (1962), *reh. denied*, 371 U.S. 943 (1962).

64. United States v. La Follette, 32 F. Supp. 953 (E.D. Pa. 1940).

65. United States v. Weiss, 150 F.2d 17 (2nd Cir. 1945), *cert. denied*, 326 U.S. 736 (1945).

> acknowledges in writing that he has received satisfaction for the injury, the court or justice may in its or his discretion . . . discharge the defendant . . . .[66]

Once again there is a very limited statute applicable to a very small percentage of the cases (usually family squabbles where the victim does not really want legal action at the time of trial) and thus it fails to reach the heart of the problem.

Some writers have suggested having the offender compensate his victim through money earned from prison labor.[67] Miller suggests revamping our system of prison labor and establishing a fund from the proceeds of that labor which could be used to compensate victims. In this way criminals as a group would pay for the injuries they have caused. Miller also suggests that if this system were adopted, the rehabilitation of criminals might be improved by relating their punishment to reparation for the harm they have done.[68]

In the present writer's opinion, although recognizing that rehabilitation might conceivably be aided by having the offender provide compensation, such compensation would be an undesirable method of achieving our aims. First of all, it would be difficult to implement under our present penal system with its few work opportunities and low pay scales. Second, instead of aiding rehabilitation, it is possible that it could produce resentment on the part of the criminal, making his return to society much more difficult. Third, the offender's family might suffer as funds which they might otherwise receive would be diverted toward payment of compensation. Even if he has no family, it seems wiser to let the offender save what little he can so that he will not have to resort to criminal behavior to support himself upon release. Finally, the fact that a large number of criminals are never apprehended produces a problem: If we had a system where there is one-to-one restitution, many victims would not be compensated; and if we had a "prison labor pool", some would be paying for the harm done by others who remain at large.

It seems preferable not to compensate victims of crime by requiring the offender to pay. Similarly, a system of compulsory insurance would not be an adequate solution, as some would inevitably be too poor to pay the premiums.[69] The best source for the money needed for the compensation would be a state fund created for that purpose, financed from the general revenue.

Now the question of what body will administer the compensation program should be considered. Massachusetts, unlike the other states and countries which have enacted statutes providing compen-

66. MASS. GEN. LAWS, ch. 276, § 55 (1846).
67. Miller, *supra* note 6 at 208-09.
68. *Id.* at 209.
69. Childres, *supra* note 21, at 457.

sation to victims of crime, has given jurisdiction to determine and award compensation to the state district courts.[70] This approach leaves much to be desired, and the use of an administrative tribunal seems preferable. First, our courts today are crowded enough without the new influx of cases which the compensation programs are bound to create. Second, it would seem better to relax the rules of evidence in this type of case; it would be easier to do this with an administrative tribunal rather than in a courtroom. Third, an administrative tribunal could rapidly develop expertise in the area. Finally, since it would be better to have periodic payments rather than one lump-sum payment in some cases, the administrative tribunal would be better equipped to supervise the payments.

The commission[71] should be relatively small, made up of three or five appointed commissioners, who should be attorneys and would serve for a period of four, five, or six years. The Commission should have the power of subpoena and should conduct a thorough investigation and hearing. From the point of view of the victim, timely reporting of the crime should be an absolute prerequisite to compensation so as to lessen the possibility of fraudulent claims. There should also be a limited period (around one year) during which the victim could apply for compensation. The claimant should have the right to be present at the hearing and should be represented by counsel which would be provided by the state in the case of indigent claimants. The claimant's counsel should have full rights to cross-examination of witnesses.[72] Any reasonable evidence should be admissible, even if it would be inadmissible under the normal rules of evidence. Moreover, the standard of proof applicable to civil cases ("preponderance of the evidence") should be used.

Capture of the criminal should not be a prerequisite to compensation. However, a conviction should be conclusive evidence that the claimant was a victim of a crime. The commission should be vested with broad discretion in determining a just award, taking into consideration not only the claimant's loss but his contribution to the injury as well.[73] The commission should also have power to award compensation by way of periodic payments, as well as to vary the award if there are changed conditions or new evidence.[74] Finally, the claimant should have the right of appeal to a court; and it seems best to have judicial review similar to that of a trial court.[75]

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70. MASS. GEN. LAWS, ch. 258A, § 2 (1967).
71. *See* in Senator Yarborough's proposed bill, 111 Cong. Rec. 14033 (1965), the *Violent Crimes Compensation Commission*; in New Zealand, the *Crimes Compensation Tribunal;* in Great Britain, the *Victims of Crimes of Violence Compensation Board.*
72. *See* Note, *supra* note 17, § 502.
73. *See* Comment, *supra* note 8, at 103.
74. *Id.*
75. *See* Note, *supra* note 17, §§ 601, 602.

Conclusion

Whether one focuses on the state's obligation to protect society from crime, on the community's duty toward those who suffer misfortune, or on the lack of remedies presently available to victims of crime, this writer believes that a good case can be made for a program of compensation to victims of violent crimes. Moreover, if a maximum limit is placed on the amount recoverable, the cost of a compensation program will surely not be prohibitive. In any event, the cost of compensation for criminally inflicted personal injury, seen in perspective, becomes small indeed.[76]

76. In New York alone, annual workmen's compensation premiums are $250,000,000. R. Childres in *Compensation to Victims of Crimes of Personal Violence: An Examination of the Scope of the Problem: A Symposium*, *supra* note 5, at 281.

Former Miss Kansas and 1968 Miss America Mrs. Debra Barnes Miles, Eudora, was one of a contingent of women who testified Wednesday in favor of Kansas rescinding its ratification of the Equal Rights Amendment to the U.S. constitution. The former beauty queen said the ERA means loss of preferential Social Security benefits for women and would sanction homosexual marriages.

—Staff Photo by Bern Ketchum

Women disunited on ERA repealer

Two women lawmakers found themselves on opposite sides of the Equal Rights Amendment in House committee hearings that included testimony from a former Miss America.

Mrs. Debra Barnes Miles of Eudora, former Miss Kansas and Miss America 1968, also found herself on the opposite side of a woman law professor at the University of Kansas.

An estimated 250 persons jammed into the committee room for the hour-long hearing on a resolution to rescind the state's ratification of the ERA. Rep. G.T. Van Bebber, R-Troy, chairman of the Federal and State Affairs Committee, said he was uncertain when the committee would act on the proposal.

Rep. Glee Jones, R-Hamlin, said the ERA is unnecessary for women. Women are afforded protection under the Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972, she said.

Sen. Jan Meyers, R-Overland Park, asserted the Legislature acted correctly when it ratified the ERA and the action was morally and ethically right.

Mrs. Miles, now a housewife and mother, compared the ERA to a wonder drug.

"I think the ERA is like a drug that attacks an illness in the body, but the side effects will kill you," she said. "It does a lot of good things, yes, but the side effects will kill you."

She argued the ERA could destroy all Social Security benefits, allow homosexual marriages and draft women into military service.

Voters are misinformed on the ERA she said, contending the amendment would not insure equal pay for equal work and could create more problems than answers.

Her arguments corresponded with assertions of other ERA opponents.

Deanell Reece Tacha, associate professor of law at KU, answered the ERA opponents' arguments with a legal analysis of the ERA.

She said even ERA opponents acknowledged discrimination against women is simplification based upon the irrelevant factor of sex."

"The amendment will not provide a cure-all for myriad problems of sex discrimination in law and society," she said. "The most important factor will continue to be the responsiveness of the judiciary to the demand for equality of treatment and without regard to sex."

Mrs. Lemuel Phillips of Ulysses, who supports the resolution to rescind, said the ERA would mean a loss of right and destruction of the nation.

"I don't want to be equal with men," she said. "I'd have to get off my pedestal. I'm a wife, first of all, a mother, a woman."

Clyd Schinnerer, Scott City farmer, described the ERA as the tip of a fatal iceberg, "beautiful at the top, but deadly below the surface."

"Those proponents of ERA are pressing the issue that the state legislatures cannot rescind ratification and yet are working hard to get states to ratify who have already rejected the amendment as Oklahoma did just two weeks ago," he said. "There's a double standard. There is nothing in the U.S. Constitution or any federal or state law or any decision of the U.S. Supreme Court which denies this right to a state legislature."

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

March 3, 1975

Opinion No. 75- 89

The Honorable Duane S. McGill
Speaker of the House
House of Representatives
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Speaker McGill:

You advise that the Federal and State Affairs Committee of the House of Representatives has voted unfavorably on a measure introduced to repeal a concurrent resolution adopted by the 1972 Legislature ratifying a proposed amendment to the United States Constitution which provides that "[e]quality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

The chairman of that committee, you advise, has indicated that the committee action was based primarily upon opinions issued by this office, which are alleged to conclude that once a state has ratified an amendment to the United States Constitution, it is powerless to rescind or withdraw that approval.

Contrary to some apparently widespread misconceptions, this office has at no time issued such an opinion or supported that position. The question whether a subsequent legislature may rescind the 1972 ratification was first presented to this office by Representative Ruth Luzatti in a request to Attorney General Vern Miller. In his opinion dated February 13, 1973, he pointed out that this very question had been discussed, but not decided, by the United States Supreme Court in Coleman v. Miller, 307 U.S. 433, 83 L. ed. 1385 (1939), aff'g 146 Kan. 390, 71 P.2d 518. The Court there discussed a similar occurrence in the nineteenth century, when the states of Ohio and New Jersey both rescinded earlier resolutions ratifying the proposed fourteenth amendment to the United States Constitution.

Thereafter, when the United States Congress adopted a resolution declaring the amendment ratified and to be a part of the Constitution, it recited that three-fourths of the States had ratified, and enumerated Ohio and New Jersey as among them. The Court held that the question of the efficacy of a withdrawal of an earlier ratification was a political question, to be decided by the Congress, and was not subject to adjudication. The Attorney General quoted thus from the opinion of the Court:

> "Thus the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the prescence of an actual ratification . . . This decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment.
>
> We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment." 307 U.S. at 449,450.

Thus, over two years ago, the Attorney General pointed out that precedent existed for withdrawal by a state legislature of previous action ratifying a proposed constitutional amendment, that precedent having been established over a century ago. He further pointed out that under the 1939 decision of the United States Supreme Court in Coleman v. Miller, supra, the effectiveness of any such rescission of a prior ratification by a state legislature is to be decided by the Congress.

When and if thirty-eight states have ratified the proposed Equal Rights Amendment, and any of those states have in addition passed resolutions withdrawing their prior ratification, the Congress will then be called upon to decide again the same question which it decided in 1868, whether the act of a state legislature in with-

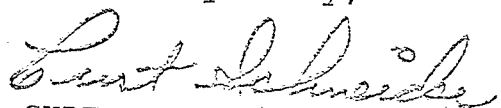
drawing its previous ratification of a proposed constitutional amendment is effective.

As I have previously indicated in a letter to Representative Loux dated January 17, 1975, I believe that this earlier opinion correctly states the applicable law on the question. Certainly, the United States Supreme Court has never decided that a state may not withdraw its prior ratification of a proposed constitutional amendment. Indeed, it has expressly decided that that decision rests with the Congress. The only precedent on this question is that established by the Congress, and of course, the Congress is free either to follow or to abandon that precedent, insofar as it believes the Constitution permits it to do so. At no time have I attempted to anticipate its decision, to conclude that the legislature is powerless to withdraw a ratification previously granted. It is reasonable to believe that the Congress will follow in the future the precedent which it has established in the past. It is impossible to conclude as a matter of law, however, that it is required to do so, or indeed, that it will do so.

In short, it is my opinion that it is within the power of the Kansas Legislature to repeal its prior adoption in 1972 of House Concurrent Resolution No. 1155, and it is further my opinion that the validity of any such legislative action must be determined by the United States Congress when and if thirty-eight states have ratified the proposed amendment.

I welcome the opportunity to dispel the entirely unjustified confusion which has surrounded this question, and appreciate your providing an opportunity to do so.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

January 17, 1975

Opinion No. 75- 16

The Honorable Richard C. Loux
House Minority Leader
3rd Floor - State Capitol
Topeka, Kansas 66612

Dear Representative Loux:

You have asked that I review the opinion issued by Attorney General Vern Miller under date of February 13, 1973, to Representative Ruth Luzatti, concerning the validity of a proposed rescission by the 1973 Legislature of 1972 House Concurrent Resolution No. 1155, whereby the Kansas Legislature ratified a proposed amendment to the United States Constitution, section one of which provides that "[e]quality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

I have reviewed this opinion, and additional materials furnished us by your staff, which were supplied to you in May, 1974, by the Kansas Legislative Research Department, concerning this question. I write to advise you that the 1973 opinion issued by Attorney General Miller represents my own opinion on the question discussed therein and, in my view, correctly states the applicable law. In addition, that opinion correctly, in my view, anticipates continued adherence to the precedents upon which it relied.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

February 13, 1973

Honorable Ruth Luzzati
Representative Eighty-Fourth District
House of Representatives
State House
Topeka, Kansas

Dear Representative Luzzati:

By the adoption of 1972 House Concurrent Resolution No. 1155, adopted March, 1972, the Kansas Legislature ratified a proposed amendment to the United States Constitution, section one of which provides that "[e]quality of rights under the law shall not be denied or abridiged by the United States or by any State on account of sex." A Concurrent House Resolution No. 1016, before the 1973 Legislature, resolves that

> " . . . the legislature rescind its action of March 28, 1972, by which it adopted 1972 House Concurrent Resolution No. 1155, which resolution related to and ratified the proposed amendment to the constitution of the United States relative to equal rights for men and women . . ."

You inquire whether the 1972 ratification is indeed subject to rescission.

In Coleman v. Miller, 146 Kan. 390, 71 P.2d 518, aff'd, 307 U.S. 433, 83 L.ed. 1385 (1939), the Kansas Supreme Court stated thus:

> "[W]here a state has once ratified an amendment it has no power thereafter to withdraw such ratification. To hold otherwise would make article 5 of the federal constitution read that the amendment should be valid 'when ratified by three fourths of the states, each adhering to its vote until three fourths of all the legislatures shall have voted to ratify.'
>
> "It is clear, then, both on principle and authority, that a proposed amendment once rejected by the legislature of a state may by later action of the same legislature be ratified; and that when a proposed amendment has once been ratified the

> power to act on the proposed amendment ceases to exist." (146 Nan. at 403.)

In its affirming opinion, the United States Supreme Court recites instances of ratification and attempted rescission thereof in relation to the adoption of the Fourteenth Amendment to the United States Constitution. Notwithstanding prior ratification, the States of Ohio and New Jersey passed resolutions withdrawing their consent. Pursuant to a directive from Congress, the Secretary of State certified to it the list of states whose legislatures had ratified the Amendment. The certification included Ohio and New Jersey, reciting that "it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual." Congress thereafter adopted a resolution reciting ratification by three-fourths of the states, including Ohio and New Jersey, and declared the Fourteenth Amendment to be a part of the Constitution. The Court stated thus:

> "Thus the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of an actual ratification . . . This decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment has been accepted.
>
> "We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment."

Thus, the Court held that the effect to be given an attempted rescission of a previous ratification was a question to be resolved by the political departments of the government, noting that the question had in effect been resolved by those departments in the historical precedent recited in its opinion.

There is no ground upon which to anticipate other than continued adherence to this precedent.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:bg

Rep. Richard Harper

Documented Arguments Against the

Equal Rights Amendment

The Equal Rights Amendment which was approved by the United States Congrss in 1972, and is in the process of being ratified by the required three-fourths of the States, says "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

An effort has been made in this paper not to exaggerate any point, but to state calmly some real concerns on the part of some very qualified authorities, namely: Professor Paul A. Freund of Harvard Law School, in excerpts from his article The Equal Rights Amendment Is Not the Way in the Harvard Civil Rights-Civil Liberties Law Review, Volume 6, No. 1, December 19, 1970; Yale Law Journal Volume 80, No. 5, and the Yale Law Journal Volume 82.

I. The amendment opens up unexpected possibilities.

1. It is in this area that unwarranted claims are made on both sides. Some proponents and opponents are too free with statements like, "this will happen" and "this can't happen".

2. There is no doubt that a lot of new things can happen, but no one knows for sure everything that will happen

3. Even if the amendment is adopted both State and Federal laws must be passed to carry out all its applications (Freund, page 236).

4. It is possible that the amendment would result in some new developments beyond what proponents promise or expect.

Those in favor rely heavily on what they call "the constitutionally guaranteed right of privacy" which (they claim) will permit the separation of sexes in such places as public toilets and military barracks.

However, Professor Freund reminds his readers "the right of privacy"has not slowed down the force of racial integration. Why should we expect the right of privacy to get greater recognition in slowing down sexual integration?

Besides, Freund says, if segregation of sexes is based solely on the right of privacy, and the prisoners in a penal institution waive this right, would the prison be required to house the sexes together?

5. Some sweeping changes would seem to stand very good chances of happening are:

(1) Non-support as grounds for divorce must be extended to the wife as well as to the husband or eliminated altogether (Yale, Volume 80, Pages 950 - 951).

(2) Child support must be made available to the father as well as the mother if he has custody (Yale, Volume 80, Page 953)

(3) Either parent might be eligible for military service, depending on who was called up first; the remaining parent, male or female, being deferred (Yale, Volume 80, Page 973).

(4) Laws against seduction, statutory rape and obscene language in the presence of women would be eliminated

rather than extended to men (Yale, Volume 80).

(5) Women would be admitted to West Point with men (Freund).

(6) Girls would be eligible for the same athletc teams as boys in public schools and colleges (Freund).

(7) Boston Boys Latin School and Girls Latin School must merge (not simply be equalized) (Freund).

(8) Women would not be allowed to pay lower life insurance premuims (based on greater life expectancy). (Freund)

(9) WACs and other women's military units would be eliminated (Yale, Volume 82).

(10) Homosexuals could legally marry (Yale, Volume 82, Page 589).

II. The amendment is not necessary or appropriate (Freund P. 236).

1. Congress has power under the Commerce clause (Article III) of the United States Constitution to deal effectively with discrimination whether it is based on sex or race. This has been shown in civil rights legislation. (Freund, Page 235).

2. Some have said the amendment is needed as a symbol of the country's concern for equal rights for women. But, if it not only is a waste of effort but will produce confusion and injustice no symbolic value can justify its adoption. (Freund, Page 237).

3. The prolonged struggle to obtain the support of Congress

in three-fourths of the States is an unfortunate misuse of energy which should be directed toward revising existing laws. (Freund, Page 236).

Professor Freund suggests that instead of adopting a new amendment with all of its questionable ramifications, that the following action be taken based on guidelines set forth in an April 1970 reportof the President's task force on women's rights and responsibilities:

(1) That the civil rights act be amended to

a. Empower the Equal Employment Opportunities Commission to enforce the law and to extend coverage to state and local governments and to teachers;

b. To authorize the attorney general to assist in cases involving discrimination against girls and women in access to public education, and require the Office of Education to make a survey on that subject;

c. To prohibit discrimination because of sex in public accommodations.

(2) That the jurisdiction of the Civil Rights Commission be extended to include denial of Civil rights because of sex;

(3) That the Fair Labors Standards Act be amended to extend coverage of its equal pay provisions to executive, administrative, professional employees;

(4) That liberalized provisions be made for child care facilities.

Postscript: There are other pamphlets published by womens groups which carry other quotes, but this paper has dealt only with quotes which could be documented from local sources.

****

2-6-75 ew

Mr. Chairman, members of the Federal and State Affairs Committee--these remarks are in support of a proposed amendment to the Kansas Constitution HCR 2006. Simply stated, this resolution calls for the inclusion in the Kansas Constitution a new constitutional standard, human rights.

This standard is supplemental to the Bill of Rights of the Kansas Constitution and to those set forth in the United States Constitution.

A bit of history is called for to give you some background as to why this resolution is presented today. First of all, history has recognized several general categories of rights. The Declaration of Independence utilizes the phrase "life, liberty and the pursuit of happiness." These have historically been referred to as natural rights. Some philosophers have included the word "property" rather than the phrase "pursuit of happiness."

These natural rights are set forth in the Kansas Constitution Bill of Rights--"All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness." Other rights that have been historically recognized are denominated as "civil," such as: property, marital, and contractural rights.

Another category that scholars have dealt with is political rights. Citizenship and suffrage are typical of these rights. For the sake of brevity I will not expand upon these further.

For years it has been my observation that the Congress of the United States and the Legislature of this great state have endeavored

to solve inequities by the passage of a number of laws, not just in the area of civil rights but also in the areas of hunger, poor housing and unequal treatment before the law, to mention just a few.

We must leave it to historians to determine whether these statutory efforts have brought about a correction of many of the imbalances in our society.

In preparing this resolution for submission to the Kansas Legislature, I reviewed the constitutional Bills of Rights for our country and for our state. Except for the one previously mentioned, in Article 1 of the Kansas Constitution, I was struck by the fact that almost all of the Bill of Rights, both in the national and state constitutions, are cast in the negative. Illustrative of these are:

> Congress shall make no law respecting an establishment....
>
> ...The right of the people to keep and bear arms shall not be infringed.
>
> No soldier shall....
>
> ...No warrants shall issue without probable cause.
>
> No person shall be held to answer for....
>
> The enumeration in the Constitution of certain rights, shall not be considered to deny or disparage other rights....

The Kansas Constitution has like language.

The United Nations adopted on December 10, 1948, a document described "The Universal Declaration of Human Rights." A copy of that

is furnished to you as an appendix to my remarks. This great document is significant in two ways: One, it is a positive expression of the concern of a world body for human beings and their relationships one with another; secondly, it ennunciates for all of us 29 human rights, most of which are set in the positive.

In 1976 this country will celebrate its bicentennial. As a part of that celebration we will be encouraged to reflect upon our great national heritage. It is hoped that it will be time when we evaluate how far we have come in our relations one with another. What better way for the citizens of Kansas to celebrate our part in the bicentennial than by discussing, debating and reflecting upon an amendment to the Kansas Constitution securing human rights to all persons. It seems to many of us that we have made progress, albeit often too slow, in the area of what is described as human rights.

This amendment, if adopted by the people of this state, would not change one whit our Constitution but, in circumstances that are constantly altered in our society, it would permit a person to seek redress for the deprivation of any human right. Specifically, this amendment would not alter the right to work amendment to the Kansas Constitution, the laws on abortion, the effect of the equal rights amendment for women, and it is not submitted with any devious motivation to accomplish some hidden end.

To those who would argue that this would open the court room door to unlimited litigation because of its general phrasing, I would say that such phrases as appear in the United States Constitution such as due process, privileges and immunities, freedom of speech, peaceful assembly, have opened the court room door for many people seeking to

have them defined, but more important, seeking the protection of that constitutional document for the rights generally prescribed.

Natural rights, to-wit: life, liberty and the pursuit of happiness, as set forth in the Kansas Bill of Rights, is just not broad enough in it's scope. The "pursuit of happiness" is a melodic phrase that I submit is without real substantive meaning. "Life" and "liberty" are general terms but do not include rights envisioned in the phrase "human rights." So it is respectfully submitted to you today that HCR 2006 should be submitted to the electors of this state for their approval or rejection.

If this resolution is submitted, it may be discussed from every pulpit in this state and from the lips of many candidates for office. More importantly, each citizen of this state will in 1976 be compelled by his vote to reflect upon how he feels toward his relationships with his fellow human beings. Through their vote they will express a personal commitment to improve and guarantee human rights rather than endeavoring to correct imbalances by legislative enactment.

Surely if our Kansas Constitution can be the repository for legalizing parlor games it has a place in it for this mandate by the people that the human rights of the citizens of this state are inviolate.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

THE GENERAL ASSEMBLY

proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948.

The rights embodied in the Declaration have been set forth in two covenants—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—which were adopted by the General Assembly on December 16, 1966.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. (1) Everyone has the right to freedom of movement and

residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject

only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

February 5, 1975

PUBLIC HEARING - HCR 2009 (Effort to Rescind ERA)
Federal & State Affairs Committee

OPPONENTS	Minutes
Rep. David Heinemann -	5
Ms. Deanell Tacha, Professor (?) University of Kansas Law School	5
Ms. Carol McDowell, Women's Political Caucus	5
Rep. John Bower	2
Senator Jan Meyers	2
Ms. Cora Hobbel, Communication Workers of Amer.	2
Ms. Theresa Counts - Individual	2
Ms. Ruth Stout Wright, Amer. Assn. of University Women	2
Ms. Kala Stroup, Dean of Women, Univ. of Kansas	2
Ms. Che Mortimer - Housewife	2
Ms. Aileen Morris, League of Women Voters	1
Ms. Darlene Stearns, Kansas Council of Churches	1
~~Ms. Jane Roy - Individual~~	~~1~~
Ms. Lou Graumann - Individual	1
Ms. Gay Shephard, Y.W.C.A.	1
Ms. Judy Runnels, Kansas Nurses' Assn.	1
Ms. Jane Werholtz, Attorney-at-Law	1
	35 (need to cut to 30)

Introduce those who are not registered by name and organization

Ms. Annabelle Haupt, Wichita Women's Political Caucus
Ms. Edna Archer, Wichita Church Women United
Ms. Susan Crocketspoon, Wichita YWCA
Ms. Debra Mehl, Wichita AWARE
Ms. Clara Boyer, Wichita State Univ. Women's Studies
Mrs. Lucien Pyle, Kansas Council of Women
Ms. Jane Roy - Individual

BE REGISTERED if you speak for anyone other than yourself
(If you are not registered let one of coordinators know in advance)
COME FORWARD quickly following one ahead of you and introduce yourself.
Rep. Heinemann will introduce some who are present at end.

KEEP IT SHORT - We have only 30 minutes.

Rep. Ruth Wilkin
Hearing Coordinator

A STATEMENT ON RESCISSION OF THE EQUAL RIGHTS AMENDMENT: MYTHS AND REALITY

February 5, 1975
Donna Fitzwater-President, Lawrence Women's Political Caucus

Sex discrimination has been an integral part of the laws, customs, and official practices of the United States. The Lawrence Women's Political Caucus believes that the Equal Rights Amendment will guarantee equal treatment for men and women under the law.

I urge all members of the House Federal and State Affairs Committee to recognize the "myths", surrounding the ERA, which have been so carefully constructed about its detrimental effects.

The members of the Lawrence Women's Political Caucus are quite proud of the fact that we are citizens of the state of Kansas. We are proud of our state's history and it's progressive attitude towards full citizenship for everyone.

We urge recognition of the fact that the ERA affects not just women's rights but all human rights. Henry Blackwell, in 1853, said, "I am the son of a woman and the brother of women. I know that this is their cause, but I feel it is mine also. Their happiness is my happiness, their misery, my misery. The interests of the sexes are inseparably connected."

Rescind the ERA? We urge you to consider the tragic error of the passage of House Concurrent Resolution 2009.

STATEMENT
by
Clyde Schinnerer
Scott City, Kansas

at the hearing of the
Committee on Federal and State Affairs
Topeka, Kansas
February 5, 1975

concerning

HCR 2009, a resolution to rescind HCR 1155, concerning

the Equal Rights Amendment (ERA)

* * * * *

Mr. Chairman, my name is Clyde Schinnerer of Scott City, Kansas, where I own and operate a farm, and I am appearing to urge this committee's support of HCR 2009, a resolution to rescind HCR 1155. I believe the ERA has many inherent dangers that most people have not considered, only now the people who would be affected are beginning to understand the magnitude of what is being proposed.

One very serious matter would be the continued separation of church and state. There are many religious bodies who still adhere to the Biblical doctrine that only men are to be preachers and elders. (1 Timothy 2:11, 12; 3:2; Titus 1:5, 6). It would be a violation of the principle of church and state and certainly this proposed Amendment would take precedence over any previous amendments that conflict with it. Senator Sam Ervin, Jr., former U.S. Senator and noted constitutional attorney said, "The most recent Constitutional Amendment takes precedent over all other sections of the Constitution with which it is inconsistent."

Certainly, we don't want the women of our great land to be mistreated, denied their proper rights, and to not have their rightful place in the human race. But let's look closely. What inequities in the laws are causing abuse to women in Kansas? If the proponents of ERA can name even as many as five inequities in the laws, let's change those laws rather than giving the Federal Government jurisdiction in family affairs. Laws such as the Civil Rights ACt of 1964, The Equal Opportunities Act of 1972, and many others give protection against discrimination at all levels. If the ERA is ratified and becomes a part of the Constitution it will eliminate many of the privacy protection laws we now have. Sexual discrimination will be just as illegal as racial discrimination. Let the first man be thrown out of a ladies restroom and the court will have to decide that he cannot be discriminated against. Let me quote from the Dan Smoot Report, March 13, 1974, "In many "Civil Rights" decisions involving racial matters, the courts have declared the "separate but equal" doctrine illegal."

Let me point out to you that the ERA will take away states rights, Kansas and all the other 49 states, in equality rights and gives them to Congress. The States will forfeit all rights of legislation, giving Congress a "blank check" in legislating laws to implement the Amendment and the Supreme Court sole authority to interpret those laws. We find there were no qualifying statements given when Congress passed the ERA on March 22, 1972. "ERA is much like a single broad-spectrum drugh with uncertain and unwanted side effects as opposed to a specific pill for a specific ill." Paul Freund, Harvard Civil Rights-Civil Liberties Law Review, Vo. 6., No.2, March 1971.

Those proponents of ERA are pressing the issue that a State Legislature cannot rescind their ratification and yet are working very hard to get states to ratify who have already rejected the Amendment as Oklahoma did just two weeks ago. Their's is a double standard. There is nothing in the U.S. Constitution or any Federal or State laws, or any decision of the U.S. Supreme Court which denies this right to a State Legislature. ERA proponents often cite the 14th Amendment in their claim that it is illegal for State Legislatures to rescind a previous ratification. However, no one who knows anything about the history of the ratification of the 14th Amendment could possibly cite it as a legal precedent for anything. The Coleman v. Miller case (1939) is often times referred to but here the action was the other way. Kansas had rejected the proposed child-labor Amendment to the U.S. Constitution and then 14 years later ratified it. It was held then that this was illegal and given to the Supreme Court for decision. They muddied the water somewhat, but the ultimate decision was that the Kansas Legislature could reverse itself and change its mind after it had previously acted on ratification of a Constitutional Amendment. Most Supreme Court Justices, when handling the case of Coleman v. Miller in 1939, felt: (1) that they had no right to handle the case because it involved a political question outside the jurisdiction of federal courts, (it has always been consistent in its position that the amending process is a "political question", not subject to "judicial interference"), (2) that as long as a proposed Amendment to the Constitution is pending - not having been ratified by three-fourths of all State Legislatures - a State Legislature can change its mind about ratifying or rejecting the proposal.

In conclusion, let me point out that this country has always set its women in high esteem. Wars have been fought, prairies and forrests tamed to provide for their wives and children. We don't want our women fighting our wars for us. As all of you men know who have lived in an all male environment, we don't want our women subjected to such conditions. Thank you.

Please notethe attached sheet showing that distinguished authorities oppose ERA.

Distinguished Authorities Oppose ERA

"When the Amendment was before Congress, I tried in every way I knew how to convince the Senate that this legislation should be amended to preserve protective legislation passed for the benefit of women; to require fathers to be responsible for family support; to exempt women from the draft and combat duty; and to preserve right-to-privacy laws and criminal laws for sex offenses. I deeply regret I was unsuccessful in my efforts and the Amendment passed the Senate unchanged.

"My view that the *ERA is the most destructive piece of legislation to ever pass Congress* still stands and I am hopeful that it will be defeated in the states."

Senator Sam J. Ervin, Jr.,
United States Senate

"I do not wish to see -- and to vote for -- a constitutional amendment which would require all women to be equally obligated with their husbands to support the family, even though millions of women may choose to do so. . . .

"I cannot in good conscience support a proposal to take away from all women the protections which reasonable men and women consider reasonable protection for women."

Congresswoman Leonor K. Sullivan,
United States House of Representatives

"Not only would women, including mothers, be subject to the draft but the military would be compelled to place them in combat units alongside of men. The same rigid interpretation could also require that work protective laws reasonably designed to protect the health and safety of women be invalidated; . . . in some cases it could relieve the fathers of the primary responsibility for the support of even infant children, as well as the support of the mothers of such children and cast doubt on the validity of the millions of support decrees presently in existence."

U.S. House Judiciary Committee Report,
No. 92-359, July 14, 1971

"In all the swirling arguments and differing interpretations of the language of the proposal, there has been very little thought given to the triple role most women play in life, namely, that of wife, mother and worker. This is a heavy role indeed, and to wipe away the sustaining laws which help tip the scales in favor of women is to do injustice to millions of women who have chosen to marry, to make a home, to bear children, and to engage in gainful employment as well. . . . I refuse to allow the glad-sounding ring of an easy slogan to victimize millions of women and children."

Congressman Emanuel Cellar,
United States House of Representatives

"That the proposed Equal Rights Amendment would open up an era of regrettable consequences for the legal status of women in this country is highly probable. That it would open up a period of extreme confusion in constitutional law is a certainty. . . . The Amendment expresses noble sentiments, but I'm afraid it will work much mischief in actual application. It will open a Pandora's box of legal complications."

Professor Paul Freund,
Harvard Law School

"The so-called Equal Rights Amendment . . . is largely misrepresented as a women's rights amendment when in fact the primary beneficiary will be men. I am opposed to its approval."

Professor Philip B. Kurland,
University of Chicago Law School

"Is the Equal Rights Amendment to be the Tonkin Gulf Resolution of the American social structure? . . . I would predict that the Equal Rights Amendment and many of the other goals of its proponents will bring social disruption, unhappiness and increasing rates of divorce and desertion."

Dr. Jonathan H. Pincus,
Professor of Neurology,
Yale Medical School

The Equal Rights Amendment "would minimize legal reinforcement of cultural mores supportive of family life, tend to degrade the homemaker role, and support economic development requiring women to seek careers. Plato's concept of common women and common children (public child care is implied by degrading the homemaker role) may not be far away. . . . It seems clear that a cultural revolution of proportions beyond the ken of the proponents of the Amendment is implied."

Professor Arthur E. Ryman, Jr.,
Drake University

"Only those who are ignorant of the nature of law and of its enforcement and regardless of the intricacies of American constitutional law, or indifferent to the exacting aspects of woman's industrial life, will have the naivete or the recklessness to sum up woman's whole position in a meaningless and mischievous phrase about 'Equal Rights'."

Justice Felix Frankfurter,
New Republic Magazine

"In the beginning of mining, there were women down in those mines and children. . . . We got the women and children out of the mines, you know. . . . I've been against the Equal Rights Amendment always . . . The core of activist support for the ERA comes from middle class white women, but passage of the ERA would endanger the hard won rights of working women -- both black and white."

Dr. Margaret Mead, Anthropologist,
Columbia University

"Use of the law in an attempt to conjure away all the differences which do exist between the sexes is both an insult to the law itself and a complete disregard of fact."

Professor Bernard K. Schwartz,
New York University Law School

"I call the Equal Rights Amendment the liftin' and totin' bill. More than half of the black women with jobs work in service occupations; if the Amendment becomes law, we will be the ones liftin' and totin', so passage of ERA is not our first priority."

Jean Noble, Executive Director,
National Council of Negro Women

TESTIMONY AT HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

TOPEKA, KANSAS February 5, 1975

By: Helen T. Foresman (Mrs. LeRoy F.)
2825 North 56 Street
Kansas City, Kansas 66104

I am president of the Archdiocesan Council of Catholic Women, Kansas City in Kansas, a federation of the Catholic women's organizations in this Archdiocese which encompasses 21 counties of Northeast Kansas; representing approximately 30,000 concerned women for the rights of others.

Today as a representative of this Federation I wish to express our support for House Resolution No. 2009, rescinding Kansas's ratification of the Equal Rights Amendment.

For the 50 years we have been organized in Kansas, our members have supported issues and laws for the advancement and protection of each individual regardless of sex, race or creed, and with this dedication we are concerned for each ones welfare.

Believing God created each individual person equal and that we have a duty to take an equal responsibility in this world; believing that the family life structure as we know in our culture is most vital to our civilization, our concern among many other aspects of the Equal Rights Amendment is the drastic and insidious changes which will be wrought by this Amendment on the family life in these United States.

Paul A. Freund of the Harvard Law School speaking to the fact that laws concerning women would become a constitutional issue to be resolved by the Supreme Court of the United States said "The range of such potential litigation is too great to be readily foreseen, but it would certainly embrace such diverse legal provisions as those relating to widow's allowance, the obligation of family support and grounds for divorce, the age of majority and the right of annulment of marriages, and the maximum hours of labor for women in protected industries. Not only is the range of the amendment of indefinite extent, but even more important, the fate of all this varied legislation would be left highly uncertain in the face of judicial review. Presumably, the amendment would set up a constitutional yardstick of absolute equality between men and women in all legal relationships."

One area we might consider is: Social Security benefits. When we wipe out the law that the husband must support his wife, then she has no right to collect Social Security benefits on his earnings. Certainly, when each person is treated equally regardless of sex, women will be the clear losers.

In the some forty years Social Security has been inexistance we have seen changes, but it remains the fact women are protected - recognizing the dignity and worth of the woman who makes her career in the home.

In writing the Social Security Act, since we in the United States had never had such a plan, the authors looked to several foreign countries, Germany particularily, for study and consultation before writing this legislation. Today looking at another foreign country whose men and women enjoy equality -- freedom of equality; women, the freedom of equality that she must place her children in a day care center and work in the chosen - government chosen career; freedom of equality to chose the type work one engages in so long as it is the government's wishes;

freedom of equality that women engage in all types of labor which we in our culture consider in the realm a man's work. As the niece of one of the Social Security authors, it seems to me we have the example of equality of the sexes in that foreign country and I feel sure we do not wish to pattern our lives and laws after them.

A Professor of Neurology at the Yale Medical School, Dr. Jonathan Pincus, concerned about the amendment's removal of a husband's responsibility said, "It seems to me that the removal of legal responsibility from a man for supporting a family, giving the family a name and protecting his daughters from the sort of influences the U. S. Army might have in store for them before marriage is likely to have some effect on the manner in which men relate to their wives and children and vice versa; those traditional ties will be weakened."

We feel a solid happy family life is the foundation of mental health and happiness and see the Equal Rights Amendment bringing social disruption, unhappiness and increasing rates of divorce and desertion. Weakening of family ties also leads to increased rates of alcoholism, suicide and sexual deviation.

At the present time we all are concerned about these problems which exist in our society and I do not believe we wish to release a Pandora's box which would further nurture these.

When God created men and women, He made physiological and functional differences between them. These differences confer upon men a greater capacity to perform arduous and hazardous physical tasks. This does not imply that either sex is superior to the other. It simply states the all important truth that men and women complement each other in the relationships and undertakings on which the existence and development of the race depend.

The former Senator from North Carolina, Sam J. Ervin, Jr stated, "From time whereof the memory of mankind runneth not to the contrary, custom and law have imposed upon men the primary responsibility for providing a habitation and a livelihood for their wives and children to enable their wives to make the habitations homes, and to furnish nurture, care and training to their children during their early years.

"In this respect, custom and law reflect the wisdom embodies in the ancient proverb that God could not be everywhere, so he made mothers. The physiological and functional differences between men and women constitute the most important reality. Without them human life could not exist. For this reason, any country which ignores these differences when it fashions its institutions and makes its laws is woefully lacking in rationality. Our country has not thus far committed this grievous error."

Time does not allow a review of many of the ramifications and inherent dangers to men's and women's rights in the Equal Rights Amendment. We would request you give serious consideration to the task at hand and would request you to adopt House Resolution 2009.

Thank you.