



4-1-1966

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Recommended Citation

Luis Kutner, *Crime--Torts: Due Process of Compensation for Crime Victims*, 41 Notre Dame L. Rev. 487 (1966).

Available at: <http://scholarship.law.nd.edu/ndlr/vol41/iss4/4>

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CRIME-TORTS: DUE PROCESS OF COMPENSATION FOR CRIME VICTIMS

Luis Kutner*

This article is concerned with the due process rights of victims of crimes to bring a civil action for damages against the government responsible for maintaining law and order, whether it is federal, state or municipal. Since criminal law is that part of social control which is enforced by public officers, what rights inure to the public when social control breaks down? Since individual freedom is limited by social control, what remedy is there when limitations on individual freedom prevent effective self-protection?

One of the risks of living in society is the recurrence of criminal violence. Since it is a continuing, serious social problem — one that cannot ever be completely eliminated — countless thousands of victims will suffer violence upon their person through no fault of their own. The obligation to redress the wrongs arising out of criminal violence rests upon the local government, which has a duty to furnish adequate police protection. The decline of social conditions must extend the liability of municipalities.

In most metropolitan areas, the ratio of police to population is one policeman to approximately 30,000 persons. For example, Chicago has an estimated 10,000 police department employees, of which an estimated 1,500 are engaged (during each eight-hour period) in prevention of violent crime. Obviously, this cannot be adequate police protection. Until such time as Chicago and other similar municipalities raise the salaries of policemen to a dignified level — even to that of a truck driver — will there be this breakdown of adequate protection against the commission of violent crimes.¹

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¹ Chicago operates on a thirteen-period year and for every four-week period there are 8,176 major crimes, including 26 homicides, 95 rapes, 811 assaults, 1,267 robberies, 2,334 burglaries, 1,294 thefts of \$50.00 or more and 2,347 auto thefts. Letter From Col. Minor K. Wilson, Deputy Supt., Chicago Police Dept., to Mr. Luis Kutner, Nov. 23, 1965.

According to the Gallup Poll, one-third of all Americans, and 42% of the inhabitants of the larger cities, are afraid to walk the streets at night. London Observer, Nov. 21, 1965, p. 40.

Representative Gurney of Florida recently introduced a bill providing that a portion of the tax money collected by the Treasury Department be returned to the states for use in law enforcement without any federal strings. In his introduction, Mr. Gurney presented the following statistics:

[E]very 55 minutes during the year 1964, someone was murdered in the United States. Every five minutes, there was a holdup. . . .

The crime rate in the United States has risen six times as fast as the population since the year 1958. Murder alone jumped by 8 percent in 1964, assault by 17 percent, rape by 21 percent, robbery by 12 percent. All crimes of violence increased by an average of 12 percent. In figures the total murders for that year were 9,289, while there were 185,000 assaults, 111,753 robberies, 20,551 reported cases of rape. There were 1.1 million burglaries.

. . . The national crime rate for 1964 was 1,361.2 violent crimes for every 100,000 people. In large cities, the rate was 1,699.1 for every 100,000.

Other urban areas outside of major cities showed a rate of 948.9, with rural areas showing a rate of 549.4 per 100,000. . . .

Some cities have higher crime rates than others and certain sections of the various cities are more notorious than others.² People living in areas with high crime rates, whether by chance or by choice, do not share equally in the peace and general welfare of the community, state and nation. These people should be compensated for losses sustained by reason of this inequity. As a result of the Watts riots in August, 1965, losses from fire alone approached 200 million dollars. The losses from looting have not been calculated. Skepticism has been expressed by insurance men as to whether South Los Angeles merchants could collect insurance to cover their extensive losses. Because of this, these merchants have mobilized to recover damages in lawsuits charging negligence and inadequate protection by city and county officials. In several instances Los Angeles businessmen and homeowners have won key lawsuits against a city or county charging negligence in providing inspection and protection in cases involving landslides and dam breaks.³ It seems reasonable to expect that a suit based on negligence in providing police protection likewise ought to be successful and properly so.

A further example will illuminate the need for such a course in the law. On October 9, 1965, Arthur F. Collins was stabbed to death in a New York subway while trying to restrain a young thug who threatened two innocent

The overall crime rate for the nation has risen 20 percent since 1960.

112 CONG. REC. 2646 (daily ed. Feb. 9, 1966).

The largest single explanation for the inadequacy of police protection, as might be expected, is the lack of funds. Orlando W. Wilson has written:

The police service is not attracting its fair share of qualified recruits. In Chicago, despite our best efforts, the number of recruits is falling behind the number of resignations and other separations at the rate of about 140 a year in a force of about 10,000 men.

The answer is not only that the policeman is grossly underpaid, but even more important, that he lacks the prestige that should go with the job he performs.

The average citizen expects the police officer to be a paragon of virtue and courtesy, capable of making decisions on the street in a multitude of law enforcement situations which often baffle the best brains of the bench and bar. To attract that kind of man would require at least twice the going salary and the raising of minimum educational standards to the college graduate level.

I believe that the raising of educational requirements and salaries should go hand in hand. Not only would this be good economics but it would raise the prestige of the service to a truly professional status and make recruiting easier. As things stand now, we cannot compete in recruiting with schoolteachers, social workers and similar professions where a Bachelor's degree is required, even though we offer about the same level of pay. The image of the police service, unfortunately, defeats our best efforts! We must increase educational standards as well as the pay. Increased prestige will follow once professional status is achieved.

Letter From Orlando W. Wilson, Supt., Chicago Police Dept., to Luis Kutner, Nov. 24, 1965.

Thus, the answer to the question of more adequate police protection would seem to be more appropriations for the purposes of providing better education and training for policemen as well as better pay.

2 If one is unfortunate enough to live in any of five police districts in Chicago, then there is a likelihood of being a victim of a crime some time during a given year. The Chicago Crime Commission reported for the year 1964 that, of 390 murders and nonnegligent manslaughter offenses reported in Chicago, 55.6% occurred in just five districts. Leading all police districts in the number of murder offenses was the Eleventh (Fillmore) with 57, followed by the Second (Wabash) with 56, the Third (Grand Crossing) with 39, the Twelfth (Monroe) with 35 and the Tenth (Marquette) with 30. Of 11,797 aggravated assault offenses reported in Chicago in 1964, five districts accounted for 50.9% of the total. The districts were the same as above with the exception that the Seventh District (Englewood) replaced the Twelfth District on the top five. Of 1,186 forcible rape offenses reported in Chicago during 1964, 57.9% were committed in five police districts. Again, the Seventh edged out the Twelfth. CHICAGO CRIME COMM'N, REPORT ON CHICAGO CRIME FOR 1964 4 (1965).

3 N.Y. Times, Aug. 15, 1965, §1, p. 1, col. 8.

women. His twenty-three-year-old wife, Christine, testified before the New York Joint State Legislative Committee on Crime and Control of Firearms that she could not support her sixteen-month-old daughter and was compelled to send her to her grandmother in Zehrberg, West Germany. Her husband, a computer programmer, had no life insurance and had a yearly income of about six thousand dollars. Mrs. Collins said that her current income of ninety dollars per week was inadequate for herself, her child and other incidental expenses. All who heard were undoubtedly struck by this injustice as Mrs. Collins dramatically told the story of her husband being slain in her presence as he went to the aid of others. Some form of compensation is the obvious solution; the only questions seem to be the form it should take and how it should be determined.⁴

Most crime victims and their families can never be completely compensated for the injuries they have suffered because of crimes of violence. Oliver Gash, former president of the Washington, D.C., Bar Association, points out that there are some crime losses for which there can be no compensation because no cash value can be set upon them. He cites the callous robbery-murder of the brilliant and only son of a prominent District of Columbia attorney. The young man was shot down as he was walking his dog late one night near the French Embassy. In such a case compensation would not alleviate the loss of a son. Although Gash agrees with the idea of helping crime victims as a thought in the right direction, he feels that tax money would be better spent on more protection. Some injuries resulting from crime may not be completely compensable, but justice requires that that which is compensable ought to be compensated.

The Honorable Arthur J. Goldberg has had great influence upon the growing support for compensation for crime victims: "The victim of a robbery or an assault has been denied 'protection' of the laws in a very real sense, and society should assume some responsibility for making him whole."⁵ Ambassador Goldberg has been supported by former Senator Kenneth Keating of New York and Senator Thomas Dodd of Connecticut. Argues Keating: "Every crime represents in one sense a failure by Government to provide protection and security to law abiding citizens." Dodd agrees: "I believe we should move ahead in our thinking and start to provide assistance to the victims of misfortune."

I

Compensation for crime victims is not without historical precedent and support. The idea of compensating crime victims is as old as civilized mankind.

⁴ Committee members disagreed on how best to make compensation work. Some urged limited lump sum or periodic payments, according to a predetermined schedule, as in workmen's compensation cases. Others called for compensation based on the merit of each case. Justice James B. M. McNally of the Appellate Division of the New York Supreme Court testified that the concept of compensation was based on the fact that the state provides a prisoner with food, shelter, medical attention and rehabilitative services but does nothing for the victim of the crime or for his family. Councilman John G. Gilhooley urged the passage of a New York City bill that would give Mrs. Collins a pension similar to that received by a beneficiary of a patrolman who dies in the line of duty. N.Y. Times, Dec. 5, 1965.

⁵ Goldberg, *Equality and Governmental Action*, 39 N.Y.U.L. Rev. 205, 224 (1964).

The Code of Hammurabi (2250 B.C.) in ancient Babylon provided: "If the brigand be not captured, the man who has been robbed shall, in the presence of God, make an itemized statement of his losses, and the City and the Governor shall compensate him." The ancient Vikings, who were always raiding abroad but who had little crime at home, laid down a whole scale of damages — so much for a life, an eye, an arm, a leg, even a little finger. Compensation had to be paid either by the criminal or by his relatives. In the Britain of Alfred the Great during the ninth century, a murderer had to pay a fine to the king and to the victim's relatives. If the murderer failed to pay, his family had to make good.

From the earliest times, certain invasions of personal and property rights, now apprehended under the heading of torts, were recognized as wrongful and as constituting a basis for civil liability in some way. In the English law,⁶ and in other more ancient legal systems,⁷ the concepts of tort and crime were intermingled and no clear distinction was made between private and public law.⁸ The basic notions of tort law developed within criminal law and eventually became separate from it. Crimes came to be considered an offense against the state or society at large while torts are generally considered as wrongs done to individuals. Finally, the individual has been relegated to the remedies of the civil law to obtain redress.⁹ This means that the victims of most crimes remain uncompensated since criminals, if apprehended at all, are usually judgment-proof.¹⁰

This state of the law has not existed without criticism. Jeremy Bentham criticized this system in the late eighteenth century, basing his idea of indemnity from the state on the failure of police protection. Others who criticized the system were Garofolo and Ferri, the nineteenth century Italian Positivists. They both recognized the state's responsibility to compensate the crime victim who is unable to collect from the criminal for one reason or another.¹¹

Bentham inspired the great British penal reformer Margery Fry. Miss Fry, who died in 1958, more than ten years ago opened her campaign for state compensation of victims of criminal violence. Miss Fry argued:

It is old-fashioned now to quote Bentham, but on the tendency of criminal law to pay scant attention to the needs of the victim, he puts it well: "Punishment, which, if it goes beyond the limit of 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." He held that "satisfaction" should be drawn from the offender's property, but "if the offender is without property . . . it ought to be furnished out of the public treasury, because it is an object of public good and the security of all is interested in it."¹²

⁶ BURDICK, TORTS §3 (4th ed. 1926).

⁷ LEE, HISTORICAL JURISPRUDENCE 116-18 (1927).

⁸ See HALE, TORTS 6 (1896); JAGGARD, TORTS 8 (1895).

⁹ See Schultz, *The Violated: A Proposal To Compensate Victims of Violent Crimes*, 10 ST. LOUIS U.L.J. 238 (1966).

¹⁰ See 18 STAN. L. REV. 266 (1965).

¹¹ See Schulz, *supra* note 9, at 240.

¹² *Compensation for Victims of Criminal Violence: A Round Table*, 8 J. PUB. L. 191, 192 (1959).

II

The influence of these writers and others has been felt in the legislatures of several nations and states of the Union. The jurisdictions having statutes providing some type of compensation are New Zealand,¹³ England¹⁴ and California.¹⁵ Among those considering similar legislation are Illinois¹⁶ and the United States Congress (for Washington, D.C.).¹⁷

The New Zealand government has led the way by enacting their statutory scheme at the end of 1963.¹⁸ It was acknowledged that the British section of the International Commission of Jurists, chaired by the Right Honorable Lord Hartley Shawcross, Q.C., was of considerable value to those who drafted the statute. The British Government, reflecting its own historic conservatism, has decided for the time being to rely on a nonstatutory compensation board.¹⁹ The British report acknowledges much can be said for the experimental approach but includes some criticism:

It can lead to difficulties and to uncertainties as to who is liable to be eligible for compensation under the scheme. We welcome the acceptance of the principle of damages as the basis for payments, rather than the industrial insurance principle, although we have some doubts about the limitations placed upon the amounts to be recovered and on the circumstances which will justify payments. In particular, the total exclusion of members of an offender's family, although making it easier to prevent fraud, may lead to injustice. The provision for compensating members of the public assisting the police power appears to be far too narrowly worded.

A major divergence from the *Justice* scheme is that it will be administered by a Board consisting entirely of lawyers. For the same reason that we invited a number of laymen to serve on our committee, we think that the body which is to determine claims should have a wider basis of membership and include a medically qualified person and a lay magistrate, one of whom should be a woman. Many of the decisions and assessments to be made will not necessarily be of a legal nature. . . . This is a new advance in social welfare legislation. . . .²⁰

The California scheme consists of two statutes, one of which is a "Good Samaritan" Statute,²¹ providing compensation for one injured while preventing a crime or aiding in the apprehension of a felon. The other provides compensation for victims of crimes.²² The program is administered by a state board and awards are based on need rather than loss. Victims of violent crimes who suffer

13 Criminal Injuries Compensation Act, Act No. 134 of 1963 (N.Z.) (effective Jan. 1, 1964).

14 Home Office, *Compensation for Victims of Crimes of Violence*, CMD. No. 2323 (1964).

15 CAL. PEN. CODE §§13600-03 (West Supp. 1965); CAL. WELFARE & INST'NS CODE §11211. For text of statutes, see APPENDIX II.

16 H.B. 682, 74th G.A. (Ill. 1965).

17 S. 2155, 89th Cong., 1st Sess. (1965); H.R. 11818, 89th Cong., 1st Sess. (1965). For text of bill, see APPENDIX I.

18 See Cameron, *Compensation for Victims of Crime: The New Zealand Experiment*, 12 J. PUB. L. 367 (1963).

19 See Foulkes, *Compensating Victims of Violence*, 52 A.B.A.J. 237 (1966); Note 78 HARV. L. REV. 1683 (1965).

20 7 JUSTICE ANN. REP. 6-7 (1964).

21 CAL. PEN. CODE §§13600-03 (West Supp. 1965).

22 CAL. WELFARE & INST'NS CODE §11211.

temporary or permanent injuries will receive state aid during their period of disability. In the case of a murder victim, his or her dependent survivors are also to be given state aid.²³

A criticism of the California plan is that the payment of 165 dollars per month for victims of crimes or the dependents of murder victims is too low and that it is demeaning to place them in the same category as people on the welfare rolls. As Governor Edmund G. Brown stated when he signed the California compensation bill, "It is ironic that California must spend millions of dollars for the rehabilitation of law breakers for the food, clothing, medical care and other expenses in a correctional institution, while their victims are left to fend for themselves."

A bill recently introduced in the Illinois legislature provides for the creation of a commission to study the feasibility of compensating crime victims.²⁴ Senator Ralph Yarborough of Texas has introduced Senate Bill 2155, "A Bill To Provide for the Compensation of Persons Injured by Certain Criminal Acts," with the effective date of January 1, 1966.²⁵ Similarly, Representative Edith Green of Oregon has introduced HR 11818.²⁶ In her remarks of October 22, 1965, she stated:

The distinguished Senator YARBOROUGH, of Texas, has introduced legislation to better balance the values of police protection and constitutional rights for the accused and community care for the victim. The theory under which this legislation is introduced—to compensate victims of crimes of violence for injuries to the person—is fairly new in this country. Great Britain and New Zealand already have compensation plans, and the State of California recently embarked on such a program.²⁷

The term Crime-Tort expresses the legal notion that has been recognized in these statutes—the liability of a governmental unit for failure to protect its citizens. It seems that a desirable trend is under way. Perhaps it is possible that this trend could prevail even where legislatures are not considering the problem.

III

The greatest obstacle to a Crime-Tort action is the doctrine of sovereign immunity. This bar to any action against a governmental unit has been grounded on two theories: (1) the king can do no wrong, and (2) liability would hamper the effective functioning of government. The doctrine has been steadily losing its strength both in the legislatures²⁸ and in the courts.²⁹

²³ See 18 STAN. L. REV. 266 (1965).

²⁴ H.B. 682, 74th G.A. (Ill. 1965).

²⁵ S. 2155, 89th Cong., 1st Sess. (1965). See 111 CONG. REC. 15018 (daily ed. July 6, 1965); 111 CONG. REC. 14027 (daily ed. June 23, 1965); 111 CONG. REC. 13533 (daily ed. June 17, 1965); 110 CONG. REC. 15840 (daily ed. July 21, 1964). See Yarborough, *S. 2155 of the Eighty-Ninth Congress: The Criminal Injuries Compensation Act*, 50 MINN. L. REV. 255 (1965).

²⁶ H.R. 11818, 89th Cong., 1st Sess. (1965).

²⁷ 111 CONG. REC. 27316 (daily ed. Oct. 22, 1965).

²⁸ E.g., Federal Tort Claims Act, ch. 753, 60 Stat. 842 (1946) (codified in scattered sections of 28 U.S.C.).

²⁹ E.g., *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 359 P.2d 457 (1961); *Hargrove*

A number of states have statutes imposing liability on governmental units for their negligence in firefighting or related duties. One researcher has surveyed the law in these states and drawn conclusions concerning the relationship between liability and performance:

Wisconsin, for example, has adopted a general statutory requirement that public entities shall pay judgments rendered against public officers, including fire-fighting personnel, for acts done by them in good faith performance of official duty. Connecticut has enacted a similar rule, limited to firemen engaged in performing fire duties, under which the employing public entity is required to pay all sums such firemen become obligated to pay "by reason of liability imposed . . . by law for damages to person or property, except for damages resulting from wilful or wanton misconduct." Massachusetts likewise requires its public entities to indemnify their firemen for liabilities incurred in the performance of duty, leaving the maximum amount of such indemnity to the discretion of the appointing authority.

The significance of these statutes is that legislative bodies . . . have found the rule of immunity to be unduly restrictive in several significant respects and have waived sovereign immunity accordingly. No evidence has been found which suggests that even the extensive—in fact, nearly comprehensive—waivers of immunity in Wisconsin, Connecticut and Massachusetts have crippled any of the public entities in those states, or have tended to bring about a curtailment of fire services.³⁰

v. Town of Cocoa Beach, 96 So. 2d 130 (Fla. 1957); *Moliter v. Kaneland Community Unit Dist. No. 302*, 18 Ill. 2d 11, 163 N.E.2d 89 (1959); *Holytz v. City of Milwaukee*, 17 Wis. 2d 26, 115 N.W.2d 618 (1962). See PROSSER, *TORTS* §125, at 1010-13 (3d ed. 1964).

The *Moliter* case involved an action by the father of a minor son against the school district for personal injuries sustained when a school bus left the road, hit a culvert, exploded and burned, allegedly as a result of the driver's negligence. The defendant moved to dismiss on the ground that a school district is immune from liability. The trial court sustained the motion and the appellate court affirmed. Before reversing, the Supreme Court of Illinois pointed out at least four areas in which the "king" had permitted suits to be brought against him:

Governmental units, including school districts, are now subject to liability under the Workmen's Compensation and Occupational Diseases Acts. . . . The State itself is liable, under the 1945 Court of Claims Act, for damages in tort up to \$7,500 for the negligence of its officers, agents or employees. . . . Cities and villages have been made directly liable for injuries caused by negligent operation of fire department vehicles, and for actionable wrong in the removal or destruction of unsafe or unsanitary buildings. . . . Cities and villages, and the Chicago Park District have also been made responsible, by way of indemnification, for the nonwilful misconduct of policemen.

Id. at 16-17, 163 N.E.2d at 91-92. Commenting directly on the sovereign immunity theory, the court stated:

[W]e agree with the Supreme Court of Florida that in preserving the sovereign immunity theory, courts have overlooked the fact that the Revolutionary War was fought to abolish that "divine right of kings" on which the theory is based.

Id. at 21-22, 163 N.E.2d at 94. Liability, it was argued, would hamper the effective functioning of government. The court, after observing that the state permitted lesser governmental units to insure their officials, concluded that:

If tax funds can properly be spent to pay premiums on liability insurance, there seems to be no good reason why they cannot be spent to pay the liability itself in the absence of insurance.

* * * *

The public's willingness to stand up and pay the cost of its enterprises carried out through municipal corporations is no less than its insistence that individuals and groups pay the cost of their enterprises. Tort liability is, in fact, a very small item in the budget of any well organized enterprise.

Id. at 23-24, 163 N.E.2d at 95.

30 Van Alstyne, *Governmental Tort Liability: A Public Policy Prospectus*, 10 U.C.L.A. L. REV. 463, 510 (1963). For the present version of the statutes referred to, see CONN. GEN. STAT. ANN. §7-308 (Supp. 1965); MASS. ANN. LAWS ch 41, §100 (Supp. 1964); WIS. STAT. ANN. §270.58 (Supp. 1965).

The trend toward abolition of immunity or imposition of liability in specified circumstances has been demonstrated in other areas.³¹ In addition, New York has adopted a statute generally waiving governmental immunity, which applies to both the state and to municipalities.³²

Many states have adopted statutes which are similar in purpose to those providing compensation for the victims of crime. These laws impose liability on municipal corporations or counties for mob or riot damage. For example, an Illinois statute provides:

Any person suffering material damage to property, injury to person or death as a result of any of the following unlawful activities shall have an action against the city, village or incorporated town in which such damage or injury is inflicted, but only if the city, village or incorporated town has a population in excess of 5,000:

- (1) Mob action . . .
- (2) Lynching . . .
- (3) Unlawful taking from the custody of any person legally exercising such custody. . . .³³

Underlying the statutory imposition of absolute liability for injury to property from mob violence may be the notion that such injury would not ordinarily occur unless enforcement officials made a mistake in calculating the need for or extent of necessary police protection under the circumstances.³⁴ One writer cites the purpose of these statutes as threefold:

- (1) to compensate an injured party where civil recovery would otherwise be exceedingly difficult, (2) to encourage municipal authorities to maintain order, and (3) to stimulate the taxpayers of the community to resist organized lawlessness.³⁵

It seems that this rationale can be extended to include damage from all crimes.

Where statutes or decisions have abolished governmental immunity generally or specially without imposing liability, the courts have developed several doctrines which have preserved nonliability. The first of these is the categorization of state and municipal activities into "governmental" and "proprietary" functions with liability found only in the latter case. As Dean Prosser wrote:

Certain functions and activities, which can be performed adequately only by the government, are more or less generally agreed to be "governmental" in character, and so immune from tort liability. There is no liability, for example, for a failure to make and enforce appropriate laws and regulations, or a failure to take the proper course in the exercise of the legislative or judicial discretion conferred upon the municipality by the state.³⁶

31 *E.g.*, OHIO REV. CODE ANN. §701.02 (Page 1953) (injury caused by driver of municipal vehicle); WIS. STAT. ANN. §101.06 (Supp. 1965) (unsafe public buildings). See generally 2 ANTIEAU, MUNICIPAL CORPORATION LAW §§11.00-13.05.

32 N.Y. CT. CL. ACT §8. See 2 ANTIEAU, *op. cit. supra* note 31, §12.05.

33 ILL. ANN. STAT. ch. 24, §1-4-8 (Smith-Hurd Supp. 1965). A similar statute applies to counties. ILL. ANN. STAT. ch. 38, §25-3 (Smith-Hurd 1964).

34 Van Alstyne, *supra* note 30, at 485. See 16 HASTINGS L.J. 459 (1965).

35 2 ANTIEAU, *op. cit. supra* note 31, §12.06, at 129.

36 PROSSER, *op. cit. supra* note 29, §125, at 1005.

On the other hand, when the city performs a service which might as well be provided by a private corporation, and particularly when it collects revenue from it, the function is considered a "proprietary" one, as to which there may be liability for the torts of municipal agents within the scope of their employment.³⁷

It may be argued that decisions as to whether or not to deploy policemen here or there or as to the size and competency of a particular police force are political questions to be decided by those elected or appointed to positions involving discretion. This exercise of a governmental function, it may be said, ought not be called into question in a court of law, since such discretion was not relegated to judges and juries and, therefore, ought not be questioned by them.

Various jurisdictions have dealt with this battle of labels in an attempt to preserve immunity for certain governmental functions.³⁸ It must be pointed out here that there is a difference between suits against a governmental agency and an individual therein. It may be true that public servants would be unduly hampered and intimidated in the discharge of their duties and that an impossible burden would fall upon all our agencies of government, if immunity to private liability were not extended in some reasonable degree to those who act improperly, or exceed the authority given.³⁹ But this danger does not exist in suits against the agency itself.

Two courts, one with the aid of their legislature, have abandoned the label game. Wisconsin's Supreme Court, in *Holytz v. City of Milwaukee*,⁴⁰ declared:

Perhaps clarity will be afforded by our expression that henceforward, so far as governmental responsibility for torts is concerned, the rule is liability—the exception is immunity. In determining tort liability of a municipality, it is no longer necessary to divide its operations into those which are proprietary and those which are governmental.⁴¹

After the Minnesota case of *Spanel v. Mound View School Dist. No.*

37 *Id.* at 1007.

38 See, e.g., *Resnick v. Michaels*, 52 Ill. App. 2d 107, 201 N.E.2d 769 (1964); *McAndrew v. Melarchuk*, 33 N.J. 172, 162 A.2d 820 (1960). In *Lipman v. Brisbane Elementary School Dist.* the Supreme Court of California stated:

Because of important policy considerations, the rule has become established that government officials are not personally liable for their discretionary acts within the scope of their authority. . . .

The danger of deterring official action is relevant to the issue of liability of a public body but is not decisive of that issue. It is unlikely that officials would be adversely affected in the performance of their duties by fear of liability on the part of their employing agency as by the fear of personal liability. . . . Although it may not be possible to set forth a definitive rule which would determine in every instance whether a governmental agency is liable for discretionary acts of its officials, various factors furnish a means of deciding whether the agency in a particular case should have immunity, such as the importance to the public of the function involved, the extent to which governmental liability might impair free exercise of the function, and the availability to individuals affected of remedies other than tort suits for damages.

55 Cal. 2d 224, 359 P.2d 465, 467 (1961).

39 *PROSSER, op. cit. supra* note 29, §125, at 1013.

40 17 Wis. 2d 26, 115 N.W.2d 618 (1962).

41 *Id.* at 625.

621,⁴² which did away with the defense of sovereign immunity, the 1963 legislature swept away the label game with the following clause:

Subject to . . . [certain] limitations . . . every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.⁴³

To underscore the fact that labels were means of preserving nonliability and that the judicial posture in Minnesota was diametrically opposed to governmental immunity, the supreme court concluded in a later case that "because the doctrine of sovereign immunity is repugnant to basic principles of justice, there falls upon us the obligation to subordinate it to any authority which would lead us to the just conclusion."⁴⁴

The New York courts have developed a doctrine that further restricts the liability of municipalities in the face of the statutory waiver of immunity. Although a city owes a general duty of protection to the public there is no duty to protect particular persons.⁴⁵ This doctrine, however, has recently been modified by the New York Court of Appeals where there was a special duty to the plaintiff.

In the case of *Schuster v. City of New York*⁴⁶ an action was brought against the city for the wrongful death of the plaintiff's intestate. The decedent was an informer who had been provided police protection, but who was subsequently murdered. The issue was whether a municipality was under any duty to exercise reasonable care for the protection of a person in Schuster's situation. The complaint had been dismissed and the dismissal affirmed; it was put before the court of appeals on this novel question of law. In reversing, the court held:

In our view the public (acting in this instance through the City of New York) owes a special duty to use reasonable care for the protection of persons who have collaborated with it in the arrest or prosecution of criminals, once it reasonably appears that they are in danger due to their collaboration.⁴⁷

Justice McNally, concurring, based his opinion on a somewhat more classical foundation: "The voluntary assumption of plaintiff's intestate's partial protection carried with it the obligation to exercise reasonable prudence in regard to the foreseeable risks engendered thereby."⁴⁸ Thus, the court rested its holding on a broader breach of duty grounds, while the concurring opinion is based on misfeasance of a duty which need not necessarily have been assumed but which in fact was so assumed by the city.

42 264 Minn. 279, 118 N.W.2d 795 (1962).

43 MINN. STAT. ANN. §466.02 (1963).

44 McCorkell v. City of Northfield, 266 Minn. 267, 123 N.W.2d 367, 370 (1963).

45 Steitz v. City of Beacon, 295 N.Y. 51, 64 N.E.2d 704 (1945); Murrain v. Wilson Line, 270 App. Div. 372, 59 N.Y.S.2d 750 (1946), *aff'd*, 296 N.Y. 845, 72 N.E.2d 29 (1947). See Covey, *Alternatives to a Compensation Plan for Victims of Physical Violence*, 69 DICK. L. REV. 391, 393 (1965).

46 5 N.Y.2d 75, 154 N.E.2d 534, 180 N.Y.S.2d 265 (1958).

47 *Id.* at 80-81, 154 N.E.2d at 537, 180 N.Y.S.2d at 269.

48 *Id.* at 87, 154 N.E.2d at 541, 180 N.Y.S.2d at 275.

Justice Froessel observed in his dissent that:

Assuming *arguendo* that defendant owed Schuster a legal duty of protection and that that duty was breached, the complaint still fails to allege a cause of action in negligence because it is devoid of a factual allegation that the breach of duty was a *cause in fact* of Schuster's death.⁴⁹

The learned Justice's comment points out that the court made the city an insurer of one in Schuster's position. In other words, the price for Schuster's cooperation was absolute liability in the event of his death. Liability in this situation seemed to the court a small responsibility in light of the risk undertaken by Schuster.

An extension of the rationale in the *Schuster* case is suggested so that a governmental duty may be said to exist for the protection of all citizens, not merely those "who have collaborated with it in the arrest or prosecution of criminals." If a criminal act then occurs, it can be said that the governmental duty has been breached and that the victim can recover his damages from the government on this basis. A government paying such damages would then become subrogated to the rights of the victim as against the criminal. Let us examine the nature of such an action.

IV

An action against a governmental unit by a crime victim partakes partially of the nature of an action for breach of contract and partially of the nature of a tort. The tax dollar that a citizen pays to the municipality, state or federal government is the consideration furnished by the citizen for a contract implied in fact. The governmental unit in return furnishes means for the general welfare, such as, adequate police and fire protection, public works, streets, sanitation facilities, schools, etc. When the governmental unit fails in its consideration so that a taxpayer or third party beneficiary is injured, there is a breach of a contractual duty. The governmental unit cannot reject responsibility by defending on the grounds that adequate police protection is a gratuitous act that it is voluntarily assumed. Such is not the case. Furthermore, any injuries to a crime victim that arise from inadequate police protection are reasonably foreseeable and, therefore, should be compensable from that point of view.

Looking at the Crime-Tort action from the breach of contract point of view, there is another aspect of *quid pro quo*. As late as the eighteenth century private citizens were charged with the responsibility of preventing crime. Police officers were considered as having no more responsibilities or privileges in this regard than the ordinary citizen. The extent of this notion was evidenced by the common law crime of misprision of felony, which applied to cases where a citizen failed to fulfil his duty of apprehending a felon despite an opportunity to do so. Gradually, however, this lack of distinction between police and general citizens proved to be unworkable. Accordingly, the police have been granted much greater authority and privileges, whereas the duties of private citizens in active crime prevention have diminished. For example, police officers have

49 *Id.* at 98, 154 N.E.2d at 547, 180 N.Y.S.2d at 284.

a broader privilege to use force in the apprehension of criminals than do private citizens.⁵⁰

A more important effect of this distinction has been the enactment of statutes restricting the right of self-defense. Most, if not all, states have statutes outlawing the carrying of concealed weapons. By requiring citizens to refrain from carrying concealed weapons and exercising other common law privileges, the state has taken efficient means of self-protection from the citizen in return for an assumption of protection by the government. This is another kind of contractual duty implied in fact. A victim of a crime who refrains from carrying a concealed weapon when such a weapon could possibly have prevented the crime has this additional basis to support an action of Crime-Tort.⁵¹ Acts prohibiting the carrying of concealed weapons purport to protect the public against the recurrence of assaults, frays and crimes of violence which are encouraged by the general and promiscuous carrying of such arms.⁵² The practical effect of this legislation in certain crime-ridden districts is merely to encourage the mastery of knife-fighting. Perhaps the only real deterrent effect it has is to prevent large numbers of law-abiding citizens from arming in defense of their persons. What responsibilities are to be imposed upon the state in exchange for this burden upon the people?

It cannot be said that crime does not ordinarily occur unless enforcement officials are negligent in crime prevention. Despite the exercise of all reasonable precautions by the police, crime and violence would persist. Nevertheless, when a state has a duty to protect its citizens, it has an obligation to calculate the necessary extent of police protection with reasonable care under the circumstances. Implicit in any argument advocating liability to a crime victim, especially one in a high crime rate district, is the notion that the governmental unit involved was negligent in making this calculation.

Negligence, of course, suggests an action sounding in tort. The liability of a governmental unit for a Crime-Tort injury is determined by the conduct and not the mental state or intent of the defendant or its agents or officers. Voluntary conduct which produces the elements necessary for a successful action in tort, namely duty, breach of duty and damages, is tortious although unaccompanied by a deliberate design to injure or commit the wrongful act.⁵³ It is recognized that a tortfeasor is liable for the natural and proximate consequences of his act but that, unless the act complained of is the proximate cause of the injury, there is no legal liability. Proximate cause would be a serious question in an action of Crime-Tort against a governmental unit because the act of a criminal could be considered as an intervening cause. This difficulty was suggested in the dissenting opinion in the *Schuster* case.⁵⁴

There is, however, some authority which provides an analogical basis for the resolution of this problem. Dean Prosser says that "the general duty to take

50 PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 29-31 (1953).

51 *Compensation for Victims of Criminal Violence: A Round Table*, *supra* note 12, at 193.

52 *People v. Saltis*, 328 Ill. 494, 160 N.E. 86 (1927).

53 *Dallas Joint Stock Land Bank v. Harrison*, 135 S.W.2d 573 (Tex. Civ. App. 1939), reversed on other grounds, 138 Tex. 84, 156 S.W.2d 963 (1941).

54 *Schuster v. City of New York*, 5 N.Y.2d 75, 96, 154 N.E.2d 534, 546, 180 N.Y.S.2d 265, 283 (1958).

reasonable precautions for the safety of others may include the obligation to exercise control over the conduct of third persons.⁵⁵ Although there is authority to the contrary,⁵⁶ this rule has been applied where insane persons⁵⁷ or criminals⁵⁸ have been in the care of the defendant. The doctrine of intervening cause was not available in cases applying this rule. By analogy, it should not be available to a municipality where it has failed to take reasonable precautions to prevent crime when confronted with circumstances such as a high crime rate in certain areas. It cannot be suggested that criminal action injuries in high crime rate districts are the result of independent unforeseen causes and that criminal acts intervene between the original obligation of the governmental unit to the victim and the injury to the victim. In a jurisdiction where the immunity defense has been abolished, an action of Crime-Tort should be available against the municipality even in the absence of a compensation statute.

Individual freedom requires that a man be free of injuries from criminal acts. A Crime-Tort action would recognize this freedom and protect it along with property, public health, morals, order, peace, safety and welfare. The police power extends to the promotion of public safety and general welfare by regulating all things harmful to these interests. It is the recognized function of the police power, not only to preserve the welfare of the inhabitants of a community, but also to prevent any acts harmful to the public interest.⁵⁹

But the concept of the Crime-Tort need not be predicated on the sole delictual base of negligence. Two basically different philosophic theories of tort liability have been identified by scholars as competing for acceptance in American law today. The older and traditional theory, founded upon common law conceptions of individualism and self-reliance as ultimate standards of social policy, imposes tort liability upon the basis of fault. A more recent tendency, as exemplified in the law of workmen's compensation, warranty⁶⁰ and extra-hazardous activity,⁶¹ is to impose liability without regard to fault on the theory that the victims of an enterprise should be compensated for their loss and the costs distributed over the beneficiaries of the enterprise which created the risk.⁶² For purposes of the Crime-Tort action, present-day urban civilization should be regarded as an enterprise, wherein all who benefit should assume the risk of increased criminal activity in the form of municipal or state liability. In view of this and since a Crime-Tort action is predicated upon elements of both tort and contract, it seems appropriate to reject any requirement of negligence on the part of governmental officials. Adherence to the risk-of-enterprise theory must

55 PROSSER, *op. cit. supra* note 29, §54, at 344.

56 *E.g.*, *Henderson v. Dade Coal Co.*, 100 Ga. 568, 28 S.E. 251 (1897).

57 *Austin W. Jones Co. v. State*, 122 Me. 214, 119 Atl. 577 (1923).

58 *Webb v. State*, 91 So. 2d 153 (La. App. 1956).

59 *Oney v. Oklahoma City*, 120 F.2d 861 (10th Cir. 1941); *Chow v. City of Santa Barbara*, 217 Cal. 673, 22 P.2d 5 (1933); *People ex rel. Schlaeger v. Illinois Cent. R.R.*, 396 Ill. 200, 71 N.E.2d 39 (1947); *Molnar v. Curtin*, 273 App. Div. 322, 77 N.Y.S.2d 553 (1948).

60 See, *e.g.*, *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 (1960). See PROSSER, *op. cit. supra* note 29, §97.

61 See PROSSER, *op. cit. supra* note 29, §§74, 77, 79.

62 See *Catala & Weir, Delict and Torts: A Study in Parallel*, 37 Tul. L. Rev. 573, 593 (1963); Van Alstyne, *supra* note 30, at 471.

produce an action based upon strict liability, just as it has in the warranty area where elements of both tort and contract are likewise present.⁶³

V

This author pays tribute to the great efforts of Senator Yarborough and Representative Green. It is their joint effort that will undoubtedly change the attitude in the United States and achieve a climate wherein the victims of criminal attack will be given at least equal consideration as is the well cared-for offender. Although there are dissenting voices,⁶⁴ this will be the road to ultimate due process for crime victims, in that compensation will some day be measured solely on the basis of the facts in each particular case unlimited by ceilinged arbitration and commission awards. This author's objection to the administration compensation plan is that it precludes the basic premise of the system of torts to compensate the victims of accidents for the loss sustained. The money damages award for injuries suffered by the victim of a crime properly belongs within the province of courts, and juries. Furthermore, there should be no limit to damages. It has been argued that litigation in ordinary courts results in undue delay and expense as well as in the necessity of contending with burdensome technicalities of proof. This argument has some conceded validity but

63 See discussion of the *Moliter* case note 29 *supra*.

64 Professor Gerhard O. W. Mueller, of the New York University Law School, has warned against a possible increase in violent crime if a proposal to compensate the victims becomes law. At a hearing conducted by New York State Attorney General Louis J. Lefkowitz, he said that the proposed legislation might reduce a criminal's "inner hurdle" against committing crimes on the theory that "nobody really got hurt." Supporting the view that a psychological relationship existed between the victims and perpetrators of violent crimes, he suggested that sometimes, in rape and homicide cases, the crimes are victim-precipitated in that the victim's role in inducing homicide varied from an outright dare to a subliminal invitation. Professor Mueller's theory was challenged by his colleague, Associate Professor Robert Childres, who argued that the proposed compensation law specifically excluded victims of statutory rape, vehicular crimes and the crime of aiding and abetting suicide. Another viewpoint was suggested by Dean Daniel Gutman of the New York Law School, who recommended that there be no exclusions in the indemnification plan except those who are victims of criminal assault by members of their own families. Dean Miguel De Caprieles of the New York University Law School and Aaron Broder, President of the New York State Association of Trial Lawyers, supported the legislation. N.Y. Times, Jan. 15, 1966.

At a hearing at the University of California before the American Association for the Advancement of Science, Dr. Michael Fooner, Chairman of the Committee on Research, Association for Applied Psychoanalysis, reported that in 1964 there were 215,000 violent crimes in the United States resulting in death or injury to the victim. Forecasting a continuation of the trend, he stated there will be three million serious crimes in 1966. Dr. Fooner documented studies suggesting that the victim himself often contributes to the occurrence of the crime through his own carelessness, aggressive behavior or impudence. While supporting the concept that society should assume some responsibility for making the victim whole, Fooner urged that "it should also require behavior that would diminish opportunity for criminals." Chicago Daily Law Bulletin, Jan. 14, 1966, p. 1, col. 4.

Robert E. Murphy, President of the California-Western States Life Insurance Company of Sacramento, has presented the view that compensation programs encroach on the realm of private casualty and life insurance: "There's no more justification for the government indemnifying crime victims than there is for it compensating for injuries on the highway, or drownings or for people struck by lightning." Despite the unknown cost and other objections, compensation programs and legislation are gaining widespread favor. The good samaritan viewpoint is growing constantly and, as the crime rate grows, the argument that government, as part of its responsibility for keeping the peace, should compensate crime victims is a compelling one. Wall Street Journal, Jan. 17, 1966, p. 14, col. 4.

it is submitted that there are countervailing arguments which outweigh these considerations.

A commission that sits in session and hears a large number of cases will soon lose its perspective and false and improper standards may be established. As the volume of cases increases, so will institutionalization. Another problem in the proposed federal bills is the limitation upon compensation for attorneys. This could well limit the enthusiasm of the bar in representing crime victims. This limitation when viewed together with the inevitable institutionalized processes of a commission could prevent the plan from accomplishing its end. The fresh view of ever-changing juries can preserve the integrity of adequate compensation for victims of crimes, that is, remedy in direct proportion to the wrong.

For every wrong there should be a remedy. Crime victims should and will, eventually, be compensated for the injuries they have incurred because of inadequate police protection. There is adequate precedent and force of legal trends, it is submitted, to reach this result in the courts of law without statute. However, if statutory provisions are deemed necessary in order to create a Crime-Tort action, they should not take the action from the courts but should merely state that such an action is available.

APPENDIX I

89TH CONGRESS
1ST SESSION

S. 2155

IN THE SENATE OF THE UNITED STATES

JUNE 17, 1965

Mr. YARBOROUGH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the compensation of persons injured by certain criminal acts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE AND DEFINITIONS

SHORT TITLE

SEC. 101. This Act may be cited as the "Criminal Injuries Compensation Act of 1964".

DEFINITIONS

SEC. 102. As used in this Act—

(1) The term "child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child;

(2) The term "Commission" means the Violent Crimes Compensation Commission established by this Act;

(3) The term "dependents" means such relatives of a deceased victim as were wholly or partially dependent upon his income at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted and shall include the child of such victim born after his death;

(4) The term "personal injury" means actual bodily harm and includes pregnancy and mental and nervous shock;

(5) The term "relative" means his spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents;

(6) The term "victim" means a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in section 302 of this Act.

TITLE II—ESTABLISHMENT OF VIOLENT CRIMES COMPENSATION COMMISSION

VIOLENT CRIMES COMPENSATION COMMISSION

SEC. 201. (a) There is established a Violent Crimes Compensation Commission which shall be composed of three members to be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. The President shall designate one of the members of the Commission who has been a member of the bar of a Federal court or of the highest court of a State for at least eight years, as Chairman.

(b) No member of the Commission shall engage in any other business, vocation, or employment.

(c) The Chairman and one other member of the Commission shall constitute a quorum; and where opinion is divided and only one other member is present, the opinion of the Chairman shall prevail.

(d) The Commission shall have an official seal.

TERMS AND COMPENSATION OF MEMBERS

SEC. 202. (a) The term of office of each member of the Commission taking office after December 31, 1965, shall be eight years, except that (1) the terms of office of the members first taking office after December 31, 1965, shall expire as designated by the President at the time of the appointment, one at the end of four years, one at the end of six years, and one at the end of eight years, after December 31, 1965; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term.

(b) Each member of the Commission shall be eligible for reappointment.

(c) A vacancy in the Commission shall not affect its powers.

(d) Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(e) Each member of the Commission shall be compensated at the rate prescribed for level IV of the Federal Executive Salary Schedule of the Federal Executive Salary Act of 1964 except the chairman who shall be compensated at the rate for level III of such schedule.

ATTORNEYS, EXAMINERS, AND EMPLOYEES OF THE COMMISSION; EXPENSES

SEC. 203. (a) The Commission is authorized to appoint such officers, attorneys, examiners, and other experts as may be necessary for carrying out its functions under this Act, and the Commission may, subject to the civil service laws, appoint such other officers and employees as are necessary and fix their compensation in accordance with the Classification Act of 1949.

(b) All expenses of the Commission, including all necessary traveling and subsistence expenses of the Commission outside the District of Columbia incurred by the members or employees of the Commission under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission or by any individual it designates for that purpose.

PRINCIPAL OFFICE

SEC. 204. (a) The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place.

(b) The Commission shall maintain an office for the service of process and papers within the District of Columbia.

POWERS AND PROCEDURES OF THE COMMISSION

SEC. 205. (a) Upon an application made to the Commission under the provisions of this Act, the Commission shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant.

(b) For the purpose of carrying out the provisions of this Act, the Commission, or any member thereof, may hold such hearings, sit and act at such times and places, and take such testimony as the Commission or such member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member. The Commission shall have such powers of subpoena and compulsion of attendance and production of documents as are conferred upon the Securities and Exchange Commission by subsection (c) of section 18 of the Act of August 26, 1935, and the provisions of subsection (d) of such section shall be applicable to all persons summoned by subpoena or otherwise to attend or testify or produce such documents as are described therein before the Commission, except that no subpoena shall be issued except under the signature of the Chairman, and application to any court for aid in enforcing such subpoena may be made only

by said Chairman. Subpenas shall be served by any person designated by the said Chairman.

(c) In any case in which the person entitled to make an application is a child, the application may be made on his behalf by any person acting as his parent or guardian. In any case in which the person entitled to make an application is mentally defective, the application may be made on his behalf by his guardian or such other individual authorized to administer his estate.

(d) Where any application is made to the Commission under this Act, the applicant, and any attorney assisting the Commission, shall be entitled to appear and be heard.

(e) Any other person may appear and be heard who satisfies the Commission that he has a substantial interest in the proceedings.

(f) Where under this Act any person is entitled to appear and be heard by the Commission, that person may appear in person or by his attorney.

(g) Every person appearing under the preceding subsections of this section shall have the right to produce evidence and to cross-examine witnesses.

(h) The Commission may receive in evidence any statement, document, information, or matter that may in the opinion of the Commission contribute to its functions under this Act, whether or not such statement, document, information, or matter would be admissible in a court of law.

(i) If any person has been convicted of any offense with respect to an act or omission on which a claim under this Act is based, proof of that conviction shall, unless an appeal against the conviction or a petition for a rehearing or certiorari in respect of the charge is pending or a new trial or rehearing has been ordered, be taken as conclusive evidence that the offense has been committed.

(j) Except as otherwise provided in this Act, the Administrative Procedure Act shall apply to the proceedings of the Commission.

ATTORNEYS' FEES

SEC. 206. (a) The Commission may, as a part of any order entered under this Act, determine and allow reasonable attorney fees, which if the award is more than \$1,000 shall not exceed 15 per centum of the amount awarded as compensation under section 301 of this Act, to be paid out of but not in addition to the amount of such compensation, to the attorneys representing the applicant.

(b) Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this Act any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

FINALITY OF DECISION

SEC. 207. Except as otherwise provided in this Act, orders and decisions of the Commission shall be final.

REGULATIONS

SEC. 208. In the performance of its functions, the Commission is authorized to make, promulgate, issue, rescind, and amend rules and regulations prescribing the procedures to be followed in the filing of applications and the proceedings under this Act, and such other matters as the Commission deems appropriate.

TITLE III—AWARD AND PAYMENT OF COMPENSATION

AWARDING COMPENSATION

SEC. 301. (a) In any case in which a person is injured or killed by any act or omission of any other person which is within the description of the offenses listed in section 302 of this Act; and

(1) is within the "special maritime and territorial jurisdiction of the United States" as defined in section 7 of title 18 of the United States Code; or

(2) in the case of an offense committed within the District of Columbia, is a violation of title 22 of the District of Columbia Code, the Commission may, in its discretion, upon an application, order the payment of compensation in accordance with the provisions of this Act.

(b) The Commission may order the payment of compensation—

(1) to or on behalf of the injured person; or

(2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person; or

(3) in the case of the death of the victim, to or for the benefit of the dependents of the deceased victim, or any one or more of such dependents.

(c) For the purposes of this Act, a person shall be deemed to have intended an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(d) In determining whether to make an order under this section, the Commission may

consider any circumstances it determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death.

(e) No order may be made under this section unless the Commission, supported by substantial evidence, finds that—

- (1) such an act or omission did occur; and
- (2) the injury or death resulted from such act or omission.

(f) An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such act or omission. Upon application from the Attorney General, the Commission may suspend proceedings under this Act for such period as it deems appropriate on the ground that a prosecution for an offense arising out of such act or omission has been commenced or is imminent.

OFFENSES TO WHICH THIS ACT APPLIES

SEC. 302. The Commission may order the payment of compensation in accordance with the provisions of this Act for personal injury or death which resulted from offenses in the following categories:

- (1) assault with intent to kill, rob, rape, or poison;
- (2) assault with intent to commit mayhem;
- (3) assault with a dangerous weapon;
- (4) mayhem;
- (5) malicious disfiguring;
- (6) threats to do bodily harm;
- (7) lewd, indecent, or obscene acts;
- (8) indecent act with children;
- (9) kidnaping;
- (10) murder;
- (11) manslaughter, voluntary;
- (12) attempted murder;
- (13) rape;
- (14) attempted rape;

NATURE OF THE COMPENSATION

SEC. 303. The Commission may order the payment of compensation under this Act for—

- (a) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;
- (b) loss of earning power as a result of total or partial incapacity of such victim;
- (c) pecuniary loss to the dependents of the deceased victim;
- (d) pain and suffering of the victim; and
- (e) any other pecuniary loss resulting from the personal injury or death of the victim which the Commission determines to be reasonable.

LIMITATIONS UPON AWARDING COMPENSATION

SEC. 304. (a) No order for the payment of compensation shall be made under section 301 of this Act unless the application has been made within two years after the date of the personal injury or death.

- (b) No compensation shall be awarded under this Act in an amount in excess of \$25,000.
- (c) No compensation shall be awarded if the victim—
 - (1) is a relative of the offender; or
 - (2) was at the time of the personal injury or death of the victim living with the offender as his wife or her husband or as a member of the offender's household.

TERMS OF THE ORDER

SEC. 305. (a) Except as otherwise provided in this section any order for the payment of compensation under this Act may be made on such terms as the Commission deems appropriate.

(b) The Commission shall deduct from any payments awarded under section 301 of this Act any payments received by the victim or by any of his dependents from the offender or from any person on behalf of the offender, or from the United States (except those received under this Act), a State or any of its subdivisions, for personal injury or death compensable under this Act.

TITLE IV—RECOVERY OF COMPENSATION

RECOVERY FROM OFFENDER

SEC. 401. (a) Whenever any person is convicted of an offense and an order for the payment of compensation is or has been made under this Act for a personal injury or death resulting from the act or omission constituting such offense, the Commission may institute an action against such person for the recovery of the whole or any specified part of such compensation in the district court of the United States for any judicial district in which such person resides or is found. Such court shall have jurisdiction to hear, determine, and render judgment in any such action.

Process of the district court for any judicial district in any action under this section may be

served in any other judicial district by the United States marshal thereof. Whenever it appears to the court in which any action under this section is pending that other parties should be brought before the court in such action, the court may cause such other parties to be summoned from any judicial district of the United States.

TITLE V—MISCELLANEOUS

REPORTS TO THE CONGRESS

SEC. 501. The Commission shall transmit to the President and to the Congress annually a report of its activities under this Act including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded.

PENALTIES

SEC. 502. The provisions of section 1001 of title 18 of the United States Code shall apply to any application, statement, document, or information presented to the Commission under this Act.

APPROPRIATIONS

SEC. 503. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SEC. 504. This Act shall take effect on January 1, 1966.

APPENDIX II

California Penal Code

TITLE 5. INDEMNIFICATION OF PRIVATE CITIZENS

§ 13600. Authority

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, benefits the entire public. In recognition of the public purpose served, the state may indemnify such citizens in appropriate cases for any injury or damage they may sustain as a direct consequence of their meritorious action.

§ 13600.5. Private citizen defined

As used in this title, "private citizen" means any natural person other than a peace officer.

§ 13601. Claim; contents

In the event a private citizen incurs personal injury or damage to his property in preventing the commission of a crime against the person or property of another, in apprehending a criminal, or in materially assisting a peace officer in prevention of a crime or apprehension of a criminal, the private citizen or a law enforcement agency acting on his behalf may file a claim for indemnification for such injury or damage with the State Board of Control. The claim shall generally show:

(a) The date, place and other circumstances of the occurrence or events which gave rise to the claim;

(b) A general description of the activities of the claimant in prevention of a crime or apprehension of a criminal;

(c) The amount or estimated amount of the injury or damage sustained, insofar as it may be known at the time of the presentation of the claim;

(d) Such other information as the Board of Control may require.

The claim shall be accompanied by a corroborating statement and recommendation from the appropriate state or local law enforcement agency.

§ 13602. Time and place for hearing; notice; scope of hearing; report to legislature

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. At the hearing, the board shall receive recommendations from the Attorney General and law enforcement agencies, and evidence showing:

(a) The nature of the crime committed by the apprehended criminal or prevented by the action of the claimant, and the circumstances involved;

(b) That claimant's actions substantially and materially contributed to the apprehension of a criminal or to the prevention of a crime;

(c) That as a direct consequence, claimant incurred personal injury or damage to property;

(d) The extent of such injury or damage;

(e) Such other evidence as the board may require.

If the board determines, on the basis of such evidence, that the state should indemnify the claimant for the injury or damage sustained, it shall submit a report of the facts and its conclusion to the Legislature, and a recommendation that an appropriation be made by the Legislature for the purposes of indemnifying the claimant.

§ 13603. Rules and regulations

The Board of Control is hereby authorized to make all needful rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this act.

California Welfare and Institutions Code

§ 11211. Aid to family of person killed and to victim and family of person incapacitated as a result of crime of violence; fine

Aid shall be paid under this chapter, upon application, to the family of any person killed and to the victim and family, if any, of any person incapacitated as the result of a crime of violence, if there is need of such aid.

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, provided, however, that aid shall be paid regardless of whether or not the applicant meets the property qualifications prescribed for that program. In no event shall expenditures under this section for the 1965-1966 fiscal year exceed one hundred thousand dollars (\$100,000).

Upon conviction of a person of a crime of violence resulting in the injury or death of another person, the court shall take into consideration the defendant's economic condition, and unless it finds that such action will cause the family of the defendant to be dependent on public welfare, shall, 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 established, and the proceeds in such fund shall be used for the payment of aid under this section.

This section shall not constitute part of this state's plan for participation in any aid program under the federal Social Security Act, and shall be financed entirely by state and county funds. In all other respects, it shall be administered in the same manner as any other provision of this chapter.