

SHOULD CORPORATIONS BE PREVENTED FROM PAYING  
RANSOM?

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## SHOULD CORPORATIONS BE PREVENTED FROM PAYING RANSOM?\*

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Following the kidnapping of Patricia Hearst and subsequent demands by her kidnapers for several million dollars in ransom to finance a food distribution program, part of which was paid by the Hearst family, with more money promised by the Hearst Foundation upon her release, three bills were introduced into the California Senate aimed at preventing the payment of ransom by a corporation or charitable trust. Specifically the bills would prohibit the payment of corporate assets, either directly or indirectly, in response to an extortion demand, prohibit corporations holding assets impressed with a charitable trust from paying, expending, disbursing, or distributing such assets solely in response to an extortion demand, and make it a breach of trust for a trustee to distribute assets of a charitable trust in response to an extortion demand. Corporate officers, directors, employees, or trustees who approved or made such payments would be liable for the full amount. (The three bills -- SB 2187, SB 2188, and SB 2198 are appended to this paper.)

These bills, if made into law, would prevent a recurrence of the type of ransom payment promised by the Hearst Foundation. They would also prevent California corporations from making extortion and ransom payments to political extremists and common criminals such as those which have become commonplace in countries like Argentina.

Hearings were scheduled for the bills by the Assembly Judiciary Committee and the Assembly Criminal Justice Committee for August 6 and August 13, 1974. On July 29, I was asked by Assemblyman Edwin L. Z'berg, a member of the Judiciary Committee, to submit my comments on

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\* This paper is based upon written testimony submitted to the Judiciary and Criminal Justice Committees of the California State Assembly, August 5, 1974.

the proposed legislation. Since I was scheduled to depart for Europe on August 5, I submitted the following written testimony which was made available to both committees in the Assembly. Because this testimony is now part of the public record, and because of the continuing relevance of the controversial issue of ransom payment, these views are being made available for distribution to a wider audience as a Rand Paper.

In answer to your letter of July 29, I am honored to comply with your request for comments on Senate Bills #2187, #2188, and #2198. Please feel free to make these comments available to other members of the California State Assembly. You should understand, however, that they reflect my personal views based upon my research; they should not be interpreted as representing the views of The Rand Corporation or the official opinion or policy of any of its governmental or private research sponsors.

It is not difficult to understand the desire of the State Legislature to discourage extortion and ransom kidnapping. Indeed, when the public is alarmed as it has been by the Hearst kidnapping, by news of the huge ransoms being paid for kidnapped executives abroad, and by what is being called (with considerable exaggeration, I might say) the recent wave of kidnappings in this country, I have no doubt that there must be considerable heat on elected officials to do something.

If I understand the three bills correctly, they are intended to discourage a repetition of the type of ransom payoff demanded by the kidnappers of Patricia Hearst, and the huge payoffs that have been made by large business firms to common criminals and political extremists, such as those in Argentina. (It is not clear to me whether the proposed bills would prevent a California firm, one of whose executives abroad is kidnapped, from paying ransom through a foreign subsidiary.) In my view, the proposed bills are unlikely to accomplish their intended purpose. First,

their passage will not necessarily deter future kidnappings of corporate executives or members of their families. Second, the bills could instead become an obstacle to what appears to be the most important deterrent. Third, they could easily be circumvented, and in the process could raise many complicated lawsuits. Fourth, if they were strictly enforced to apply to California corporations and their foreign subsidiaries, they could result in episodes that would damage the image of the United States, as well as the image of individual corporations to which the law was applied. And, fifth, they could potentially shift the risk from corporations and trusts to private families, who are not prevented from paying ransom -- and I am not sure that that would constitute an improvement.

The three bills appear to be based upon the assumption that preventing the payment of extortion or ransom, at least by corporations and trusts, will provide a deterrent to kidnappings in the future. This is a popular notion. I have not yet been able to find convincing evidence to support this assumption. Ransom and extortion demands of the type we are talking about are carried out by common criminals, more often by political extremists. Neither category of persons is likely to be deterred by the fact that successfully carrying out their crime depends on someone else also doing something illegal, or something for which they will be liable. So what if the target of the extortion or ransom demand is required to break the law or to pay the bill out of his own pocket! The extortionist is not overly concerned with the welfare of his chosen victim.

In the case of political extremists -- for example, leftists like the People's Revolutionary Army in Argentina, or self-proclaimed revolutionaries like the so-called Symbionese Liberation Army -- the payment of ransom, sometimes to finance philanthropic enterprises dictated by the kidnapers, may often be secondary to the real objective of the kidnapers, which is publicity. I suggest that

it may not have been terribly important to the SLA whether the food distribution program they demanded was actually carried out, except to win a public concession. You will recall that they greatly reduced their initial demands. They had already achieved their primary objective, which was to attract nationwide attention to themselves and their cause.

I remain skeptical about a cause-and-effect relationship between not paying extortion and extortion not being demanded. The historical record, although imperfect, shows no such correlation between no-ransom policies and a decline in ransom kidnappings or other forms of extortion. Look at the record of ransom kidnappings in the United States. There are few ransom kidnappings in the country; the occurrence of this sort of crime has declined in the past four decades; yet the ransom demanded by kidnapers has almost always been paid, and the actual amounts of ransom have increased. (There are other reasons for the unpopularity of this crime, which I will come to in a moment.)

The same is true of hijackings. Hijackers of airplanes who demand cash have almost always received it. Those demanding a change in the plane's destination have frequently been satisfied. But the number of hijackings each year has steadily declined. There is simply no relationship here between payment and the occurrence of this crime. The decline can be explained by increased security, better tactics in handling hijackers, and the increasing unattractiveness (or elimination) of several sanctuaries for hijackers.

The United States Government has for the past several years followed a no-ransom policy when American officials are kidnapped abroad. There are too few occurrences to talk about trends, but the adoption of this policy has not ended such events. Two U.S. diplomats have been kidnapped so far this year; there were three separate incidents involving diplomats in 1973.

In countries where there have been vigorous urban guerrilla movements, including kidnappings of local officials and businessmen and foreign diplomats, we can find no relationship between a yes or no on the payment of ransom and a proliferation or decline in kidnappings. The Brazilian Government followed a policy of full compliance with kidnappers' demands when foreign diplomats were held hostage. There were four such kidnappings in 1970. There have been none since. The Government of Uruguay, on the other hand, rejected all kidnappers' demands, whether local or foreign officials were held hostage. Kidnappings continued in Uruguay until 1972, when a massive crackdown destroyed Uruguay's principal urban guerrilla organization.

While the relationship between the rejection of kidnappers' demands and a decline in kidnapping does not appear to be strong, the apprehension, conviction, and punishment of kidnappers does seem to have a discouraging effect. I refer again to the example of kidnapping for ransom in the United States. Such kidnapping was a common occurrence in the 1920s and 1930s. It is now a comparatively rare crime, owing to (a) the record that the Federal Bureau of Investigation and local law enforcement organizations have established in apprehending kidnappers, (b) the high rate of conviction, and (c) the severe sentences imposed on kidnappers. The head of the FBI recently reported that, of the 647 cases of ransom kidnapping in the past thirty years in which the FBI has been involved, all but three have been solved. The capture record is said to be better than 90 percent. In the 20 cases of ransom kidnapping in this country in the first half of this year, all but one of the kidnappers were caught. The only remaining hostage -- although the word "hostage" now seems inappropriate -- I believe, is Patricia Hearst.

In Brazil, Uruguay, Turkey, and other countries that experienced periods of urban guerrilla warfare marked by the kidnappings of local government and foreign officials, it was the harsh

crackdowns on the guerrilla organizations which ultimately put an end to the kidnappings. I am by no means endorsing the repressive, extralegal measures employed in some of these crackdowns; I am merely making the point that what happens to kidnapers after the event appears to be a more important deterrent to kidnappings than the rejection of ransom or extortion demands.

To apprehend extortionists, local police and organizations like the FBI depend on the cooperation of those upon whom the ransom or extortion demands are being made. Without this cooperation, the chances of their success in apprehending the extortionists are reduced considerably. If it appears that a hostage will be jeopardized by nonpayment of ransom, or that the payment will incur a legal liability, cooperation with the authorities is unlikely. Argentina had this experience a few years ago when it warned that companies paying ransom could be charged with a crime; cooperation with Argentine police ceased, as the companies attempted to negotiate with the kidnapers secretly. The Government of Argentina has since dropped the idea of outlawing ransom payments. Since then, cooperation with the authorities has increased somewhat; but, as the apprehension and conviction record is dismal, the kidnappings continue. It would seem, therefore, that any attempt to prevent ransom payment here could adversely affect the excellent record of cooperation -- and consequently apprehension. The bills, if passed, could conceivably be counterproductive.

I will not, for the sake of brevity, describe how these bills, if they were made into law, could be evaded by California firms with foreign subsidiaries. I will leave that to corporate lawyers and go on to my fourth point. Suppose the law *is* enforced. Let us take a hypothetical case in which a California corporation whose local manager in Argentina, perhaps an Argentinian himself, is kidnapped by leftist terrorists, and several hundred

thousand dollars are asked for his safe return. The law prevents the corporation from paying the ransom, and the hostage is killed. The terrorists, of course, have failed to get any ransom, but they have made a point: that American corporations value money more than life, that people can be sacrificed but profits cannot, that such laws are part of the American capitalist system. They are the killers, of course, and their logic is twisted. But their arguments will find some sympathy in their local audience, and the image of the corporation as well as of the United States will have suffered. Toughness on kidnapers and extortionists is one thing; toughness on hostages or on victims of extortion is another.

The fifth point -- shifting the risks from corporations to families -- is self-explanatory and needs no elaboration.

Please feel free to contact me if I can provide any further assistance.

A postscript: Most California corporations themselves strongly opposed the proposed Senate bills; the California Chamber of Commerce lobbied against them. On August 6, the Judiciary Committee declined to pass SB2187. On August 13, the remaining two bills were defeated.

## Appendix

AMENDED IN SENATE MAY 23, 1974

AMENDED IN SENATE MAY 6, 1974

**SENATE BILL****No. 2187**

Introduced by ~~Senator Carpenter~~ *Senators Carpenter, Alquist, Ayala, Bradley, Gregorio, Grunsky, Marler, Nejedly, Schrade, Stull, Wedworth, and Whetmore*  
 (Coauthors: Assemblymen Antonovich, Bannai, Chappie, Craven, Ray E. Johnson, Lancaster, Lanterman, McAlister, McLennan, Russell, Seeley, and Wakefield)

April 23, 1974

*An act to add Section 2241 to the Civil Code, relating to trusts.*

## LEGISLATIVE COUNSEL'S DIGEST

SB 2187, as amended, Carpenter. Trusts.

Makes it a breach of trust for a trustee to distribute assets of charitable trust in response to an extortion demand. Makes the trustee liable to the trust for such disbursements.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2241 is added to the Civil Code, to  
 2 read:  
 3 2241. It shall be a breach of trust for any trustee,  
 4 individual or corporate, of any charitable trust to pay,  
 5 expend, disburse or distribute any assets impressed with  
 6 a charitable trust in response to any extortion demand.  
 7 Any such trustee who approves such payment  
 8 expenditure, disbursement or distribution shall be liable  
 9 jointly and severally to the trust for the full amount of any  
 10 such payment, expenditure, disbursement or

SB 2187

— 2 —

1 distribution. For the purpose of this section, the term  
2 "trustee" includes any officer, director, trustee, or  
3 employee of a charitable corporation ~~or any other~~  
4 ~~charitable corporation~~ or any other charitable entity.  
5 This section shall apply notwithstanding the fact that any  
6 such payment, expenditure, disbursement or distribution  
7 ~~is~~ approved or made in response to an extortion demand  
8 would have been valid in the absence of such extortion  
9 demand.

AMENDED IN SENATE MAY 23, 1974

AMENDED IN SENATE MAY 6, 1974

**SENATE BILL**

**No. 2188**

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Introduced by ~~Senator Carpenter~~ *Senators Carpenter, Alquist, Ayala, Bradley, Gregorio, Grunsky, Marler, Nejedly, Schrade, Stull, Wedworth, and Whetmore*  
(Coauthors: *Assemblymen Antonovich, Bannai, Chappie, Craven, Ray E. Johnson, Lancaster, Lanterman, McAlister, McLennan, Russell, Seeley, and Wakefield*)

April 23, 1974

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*An act to add Section 9003 to the Corporations Code, relating to corporations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 2188, as amended, Carpenter. Corporations.

Prohibits certain corporations holding assets impressed with a charitable trust from paying, expending, disbursing or distributing such assets *solely* in response to an extortion demand and provides that any officers, directors, employees or trustees of any corporation holding such assets or of such charitable trusts, who approve or make such payment, expenditure, disbursement or distribution are jointly and severally liable to the corporation and the charitable trust for the full amount of such payment, expenditure, disbursement or distribution.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 9003 is added to the Corporations
- 2 Code, to read:
- 3 9003. No corporation holding assets impressed with a

SB 2188

— 2 —

1 charitable trust may pay, expend, disburse or distribute  
2 any such assets *solely* in response to an extortion demand.  
3 This prohibition shall apply to all domestic corporations  
4 holding such assets whether formed under this part or  
5 Parts ~~1~~, 2, 3, or 4 of this division, and to all foreign  
6 corporations doing business or holding property in this  
7 state with charitable or eleemosynary objects or  
8 purposes. Any officers, directors, employees or trustees of  
9 any corporation holding such assets, or of such charitable  
10 trusts, who approve or make such payment, expenditure,  
11 disbursement or distribution shall be jointly and severally  
12 liable to the corporation and the charitable trust for the  
13 full amount of such payment, expenditure, disbursement  
14 or distribution. This section shall apply notwithstanding  
15 the fact that such payment, expenditure, disbursement or  
16 distribution would have been valid in the absence of such  
17 extortion demand.

AMENDED IN SENATE MAY 23, 1974

AMENDED IN SENATE MAY 6, 1974

SENATE BILL

No. 2198

Introduced by ~~Senator Carpenter~~ *Senators Carpenter, Alquist, Ayala, Bradley, Gregorio, Grunsky, Marler, Nejedly, Schrade, Stull, Wedworth, and Whetmore*  
(Coauthors: *Assemblymen Antonovich, Bannai, Chappie, Craven, Ray E. Johnson, Lancaster, Lanterman, McAlister, McLennon, Russell, Seeley, and Wakefield*)

April 23, 1974

*An act to add Section 802.5 to the Corporations Code, relating to corporations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 2198, as amended, Carpenter. Corporations.

Prohibits any payment, expenditure, disbursement or distribution of corporate assets, *either directly or indirectly*, in response to an extortion demand and provides that all corporate officers, directors and employees who approve or make such payment, expenditure, disbursement or distribution are jointly and severally liable to the corporation for the full amount of such payment, expenditure, disbursement or distribution.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 802.5 is added to the Corporations
- 2 Code, to read:
- 3 802.5. No corporation may pay, expend, disburse or
- 4 distribute any of its assets, *either directly or indirectly*, in
- 5 response to an extortion demand. All officers, directors,

SB 2198

— 2 —

1 and employees of a corporation who approve or make  
2 such payment, expenditure, disbursement or  
3 distribution, shall be jointly and severally liable to the  
4 corporation for the full amount of such payment,  
5 expenditure, disbursement or distribution. This section  
6 shall apply notwithstanding the fact that such payment,  
7 expenditure, disbursement or distribution approved or  
8 made in response to an extortion demand would have  
9 been valid in the absence of such extortion demand.

Jenkins

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