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The National Commission on State Workmen’s Compensation Laws

Some Reflections by the Former Chairman

John F. Burton, Jr.*

The National Commission on State Workmen’s Compensation Laws (National Commission) submitted its Report to the President and the Congress in 1972. This article describes the background for the National Commission, the substance of the Report, the aftermath and impact of the Commission on state workers’ compensation programs, and the relevance and limitations of the Commission’s analysis for workers’ compensation in the 21st century.

Background

Workplace injuries increased during the 1960s and many persons blamed inadequate state safety programs for the problem. The major consequence was the enactment of the Occupational Safety and Health Act of 1970 (Act), which created a federal program and preempted most aspects of state workplace safety and health regulation. The OSH Act was supported by the Nixon Administration and passed both Houses of Congress with

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bipartisan support and overwhelming majorities. As with many laws, there are provisions included to gain the support of key legislators. In the case of the Act, one of those provisions, included at the behest of New York Senator Jacob Javits, was Section 27, which created the National Commission on State Workmen's Compensation Laws.1

Section 27 provided that the National Commission would include three ex officio members drawn from the Executive Branch plus 15 members appointed by the President to represent the various constituencies involved in workers' compensation. Not surprisingly, the appointees were almost all Republicans vetted by the White House staff. Among the members were Melvin Bradshaw, then Executive Vice President of the Liberty Mutual Insurance Company; James O'Brien, Assistant Director of the AFL-CIO Department of Social Insurance; and William Moshefsky, Vice President of the Georgia-Pacific Corporation. State interests were represented by Marion Martin, Commissioner of Labor and Industry for Maine; Daniel Doherty, Chairman of the Maryland Workers' Compensation Commission and a former President of the IAIABC; and Holland Krise, Chair of the Industrial Commission of Ohio and a subsequent President of the IAIABC. Holland Krise was designated Vice Chairman of the National Commission and, undoubtedly to the surprise of most aficionados of workers' compensation, I was appointed Chairman.2

1 The importance of Senator Javits, a Republican from New York, is reflected in the contemporary view that the U.S. Senate consisted of four political parties: the Republicans, the Northern Democrats, the Southern Democrats, and Javits.
2 I was then an Associate Professor in the Graduate School of Business at the University of Chicago. The Dean who had hired me was George Shultz, who by 1971 was a key official in the Nixon Administration, which may help explain my selection. In addition, the OSH Act included as one of the categories for representation on the National Commission, "educators having special expertise in the field of workers' compensation." I qualified because I had written a dissertation and several articles on workers' compensation. I had even already attended several IAIABC Conventions, beginning in Miami Beach in 1961 or so. And, oh yes, I was a Republican. There were probably only two persons who were Republicans and academics with expertise in workers' compensation. The other was Arthur Larson, a distinguished legal scholar and an Under Secretary of Labor in the Eisenhower Administration. Arthur was the obvious choice to serve as Chairman of the National Commission. However, Arthur had supported Lyndon Johnson in his election campaign against Barry Goldwater, and Arthur was therefore rejected by the White House staff for membership on the National Commission.
The Act specified that the final report of the National Commission be submitted no later than July 31, 1972. However, even though the Act was passed on December 29, 1970 and became effective 120 days later, the members of the National Commission were not appointed until June 1971. One of my first tasks as Chairman was to see if the July 1972 reporting date could be extended since we had such a late start. I was rebuffed by Congressional staff because in the six months since the Act had been enacted it had become so controversial that there was concern that even an innocuous bill to extend our reporting deadline would serve as the platform for significant amendments to the Act. And so we were left with a 13-month “window of opportunity.”

The 13 months were exceedingly busy. The National Commission appointed an excellent staff, including Peter Barth as Executive Director and John Lewis as Chief Counsel. There were also a number of consultants and contractors, including Professor Monroe Berkowitz, an economist, Professor Arthur Williams, an expert on insurance, and Professor Arthur Larson, a lawyer, all of whom had extensive backgrounds in workers’ compensation. The Commission held 11 meetings that consumed 32 days, with on average 17 of the members in attendance. There were also nine public hearings around the country, which involved an additional 18 days. After the first hearing, at least 15 members of the Commission attended each of these hearings. The Commission published a treatise, the Compendium on Workmen’s Compensation (Williams & Barth, 1973). The Commission also sponsored 40 supplemental studies written by staff members or contractors, which were published in three volumes (Berkowitz, 1973). Preliminary versions of the Compendium and most of the supplemental studies were provided to the Commission members before the Report was written.

The interactions among the commission members were intense. To my surprise, the public hearings had a significant impact on the deliberations of the National Commission. One reason is that, even though we were careful to not stack the sessions with egregious examples of injured workers or financially imperiled employers, the totality of the testimony conveyed a picture of the state of workers’ compensation that was much worse than we had anticipated. Another reason is that some witnesses (most notably those from the IAIABC) were unpersuasive in their presenta-
tions and/or aggressive towards the mission of the National Commission, which resulted in a high degree of cohesion among all the members.³

The Substance of the Report

The Report (1972, 15) identified five major objectives for a modern workers' compensation program: (1) broad coverage of employees and of work-related injuries and diseases, (2) substantial protection against interruption of income, (3) provision of sufficient medical care and rehabilitation services, (4) encouragement of safety, and (5) an effective system for delivery of the benefits and services. State workers' compensation programs were then evaluated in terms of these objectives and the language in the Act that required the National Commission to determine if state laws provided an "adequate, prompt, and equitable" system.

The National Commission was generally quite critical of the status of the laws in the early 1970s. For example, as to the major objective concerning coverage, the national percentage of workers covered (about 85 percent) was described in the Report (1972, 15) as "inadequate," while "inequity results from the wide variations among the states in the proportion of their workers protected by workmen's compensation." As to the objective requiring substantial protection against loss of income, the Report (1972, 18) concluded that, "In general, workers' compensation programs provide cash benefits which are inadequate" as well as being inequitable. After examining

³I recall two incidents involving the testimony of the IALABC that exasperated many members of the National Commission. At one hearing, a designated representative of the IALABC agreed that if states did not sufficiently improve their laws through state action, then federal standards for the state programs were appropriate. At the next hearing, a newly designated representative of the IALABC retracted the support for federal standards. The other incident involved a report submitted by the IALABC on the extent of state compliance with the 22 recommended standards of the organization. During a hearing, members of the National Commission pointed out several obvious errors in the extent of compliance by contrasting state statutory language with the results in the IALABC document. The response from the IALABC representative was that the report had been prepared on the basis of the information submitted by the states and that the IALABC had made no effort to ensure the accuracy of the information. After these incidents, the IALABC abandoned its plans to present testimony at all of the National Commission's hearings.
state programs in terms of all five major objectives, the National Commission reached this overall assessment (1972, 24-25):

Our intensive evaluation of the evidence compels us to conclude that State workmen’s laws are in general neither adequate nor equitable. While several states have good programs, and while medical care and some aspects of workmen’s compensation are commendable, strong points too often are matched by weak.

The National Commission did more than provide broad objectives for a modern workers’ compensation program and use those objectives to assess the laws as of 1972. The Commission also made 84 recommendations that were designed to translate the five broad objectives into specific guidance for legislators and others involved in improving state workers’ compensation programs. There were 19 recommendations in the chapter of the Report dealing with the coverage objective. These included R2.2, which recommended that employers not be exempted from coverage because of a limited number of employees, and R2.12, which recommended that the “accident” test for compensability be dropped.

There were 27 recommendations in the chapter dealing with the income maintenance objective. These included R3.17, which recommended that total disability benefits be paid for the duration of the workers’ disability without any limitations as to dollar amount or time, and R3.22, which recommended that beneficiaries in death cases have their benefits increased through time at the same rate as increases in the state’s average weekly wage. Probably the most innovative idea pertaining to cash benefits was R3.1, which recommended that weekly benefits be at least 80 percent of a worker’s spendable weekly earnings, where spendable was defined as gross wages minus federal income taxes and the employee’s contributions to the social security program. The major area where the National Commission was not able to reach a consensus concerned permanent partial disability (PPD) benefits. The Commission offered some suggestions for restructuring PPD benefits, such as explicitly separating impairment and disability benefits, but the only recommendation for PPD benefits was R3.19, which
called for state and federal examinations of present and potential approaches to these benefits.4

The chapter on the medical care and rehabilitation objective included 12 recommendations. These included R4.2, which recommended there be no statutory limits of time or dollar amount for medical care or rehabilitation services for any work-related impairment. The chapter on the safety objective contained four recommendations, including R5.3, which recommended that, subject to sound actuarial standards, the experience rating principle be extended to as many employers as practical. Finally, the chapter on the effective delivery system objective included 22 recommendations. These included R6.16, which recommended that the workers’ compensation agency permit compromise and release agreements only rarely and only after a hearing before the agency.

The National Commission devoted most of the final chapter in the Report to the future of workers’ compensation. The Report (1972, 121-25) noted that the work of the National Commission was not the first effort to improve workers’ compensation programs. One example of such reform efforts involved the IAIABC, which had developed 22 recommended standards for which compliance was encouraged by “sending a certificate to each Governor indicating the number of standards met by his state.” Lobbying efforts were also discussed, including the efforts of the insurance industry to promote changes in workers’ compensation laws. The Report noted that the insurance industry “is in a difficult position, however, because its clients are employers and it is tempted to avoid any stance which could possibly antagonize them.” Still another effort at reform was the project sponsored by the Council of State Governments; representatives from most of the organizations interested in workers’ compensation drafted a Model Act that was published in the mid-1960s.

4 I think the main casualty of the truncated life of the National Commission resulting from the belated appointment of the members was the inability to form a consensus on more specific recommendations for PPD benefits. On the other hand, I am not sure we could have held the members together much longer on the unanimous recommendation for federal standards since, as the word began to circulate that we were considering such a stance, pressures mounted on some members to abandon their support for this reform method.
After cataloguing these previous efforts at reform, the National Commission concluded, “It is evident from our evaluation of the workmen’s compensation program that these efforts have been insufficient. The crucial question is why?” The Report provided several reasons. First, the deficiencies in many states result from a lack of leadership, understanding, or interest in workers’ compensation, in part because the program is so complex. Second, in many states there are interest groups with power to veto proposed changes, which can keep the states locked into programs despite serious abuses. Third, there is competition among states for employers. The U.S. economic system encourages efficiency and mobility, which impel employers to locate where the environment offers the best prospect for profit. At the same time, many of the programs that regulate industrialization are enacted by the states rather than the Federal Government. Any state that enacts programs to regulate or ameliorate the byproducts of industrialization, such as the disability resulting from workplace injuries, invariably must tax or charge employers to cover the expenses of the programs. This combination of mobility and regulation poses a dilemma for policymakers in state government: enactment of relatively restrictive or costly regulations to protect workers may precipitate the departure of current employers or deter the entry of new enterprises.

Can a state have a modern workers’ compensation program without driving employers away? The National Commission argued that the actual costs of workers’ compensation should not deter any state from enacting such a modern program, but also observed (Report 1972, 125) “while the facts dictate that no State should hesitate to improve its workmen’s compensation program for fear of losing employers, unfortunately this appears to be an area where emotion too often triumphs over fact.” State legislators cannot be expected to become experts on interstate differences in workers’ compensation costs and their effects on employers’ location decisions. Furthermore, some employers will claim that the increases in costs will force a business exodus, and “it will be virtually impossible for the legislators to know how genuine are these claims.” The National Commission concluded the analysis of the reasons why previous reform efforts had failed with this crucial passage (Report 1972, 125):

When the sum of these inhibiting factors is considered, it seems likely that many States have been dissuaded from reform of their
workmen's compensation statute[s] because of the specter of the vanishing employer, even if that apparition is a product of fancy and not fact. A few states have achieved genuine reform, but most suffer with inadequate laws because of the drag of laws of competing states.

The serious deficiencies of state workers' compensation programs and the failures of previous reform efforts led the National Commission to consider new strategies for improving workers' compensation. One approach considered and rejected was federalization of the state workers' compensation programs — that is, enactment of a federal workers' compensation law that displaced state laws and turned over the administration of workers' compensation to federal employees. I occasionally hear allegations that the National Commission recommended federalization of workers' compensation, which I attribute to sloppy reading skills or perhaps (spare the thought) a conscious effort to undermine the credibility of the Report.

What the National Commission did recommend was "creative federal assistance" in order to enhance the virtues of a decentralized, state-administered workers' compensation program. The assistance was to consist of two forms: (1) appointment by the President of a new commission to provide encouragement and technical assistance to the states, and (2) a 1975 review of the states' record of compliance with 19 essential recommendations of the National Commission, which would culminate in federal mandates if necessary to guarantee state compliance with these essential recommendations.

The 19 essential recommendations were a subset of the 84 National Commission recommendations that focused on coverage and benefits. For example, there were no numerical exemptions for small employers and work-related diseases were fully covered. There were no limitations as to time or dollar amount for medical or rehabilitation benefits. Cash benefits for temporary total disability, permanent total disability, and death were to be at least 66 2/3 percent of the worker's average weekly wage, subject to

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As noted in the Report (1972, 126), several members of the National Commission believed that a federal takeover of workers' compensation might be appropriate in a few years if the deficiencies in the state programs were not repaired promptly, but they also believed these deficiencies could be overcome by the states.
maximums that were to be at least 100 percent of the state's average weekly wage by July 1, 1975.

The National Commission stated (Report 1972, 127) "that compliance with these recommendations should be evaluated on July 1, 1975, and, if necessary, Congress with no further delay in the effective date should guarantee compliance." And how was compliance to be guaranteed? Ah, there's the rub. The "obvious" enforcement mechanism was to impose a payroll tax on employers in states that did not comply with the 19 essential recommendations, which is essentially the method used since the 1930s to induce states to pass unemployment insurance laws adhering to federal standards.

However, this payroll tax enforcement mechanism was not considered politically feasibly in 1972, and so the National Commission relied on two other devices. First, federal laws would require employers to purchase workers' compensation insurance or otherwise secure workers' compensation protection incorporating the 19 essential recommendations. Second, an individual worker could file his or her claim with the state workers' compensation agency, which would be authorized by federal law to make awards consistent with the federal standard even if the state had not amended its workers' compensation laws to incorporate the 19 essential recommendations. The National Commission was candid enough to admit (Report 1972, 128) "the enforcement methods we have recommended lack the attribute of instant intelligibility." Not to mention the distinct possibility they were unconstitutional.6

The unanimous recommendation of the 18 members of the National Commission for the enactment of federal standards for the workers' compensation program in 1975, if states did not reform their laws, was undoubtedly a great surprise to workers' compensation experts and Wash-

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6 Another consequence of the enforcement mechanism is that the 19 essential recommendations were selected in part because they could be enforced by suits against employers or by employees against their employers. This meant, for example, that none of the National Commission's 22 recommendations for the effective delivery system were included in the 19 essential recommendations, even though many of them were as important as the essential recommendations.
ingtion politicians. Not what you would expect from 18 members, almost all of whom were Republicans and about half of whom represented employers, the insurance industry, and state agencies. The explanation of this strategy is essentially that the National Commission concluded: (1) state workers' compensation programs had such serious deficiencies that the future of the system was in jeopardy, (2) a major source of the deficiencies was competition among states to see who could have the least expensive programs, which translated into the least adequate and equitable programs, (3) states should be given one last chance to improve their laws without federal intervention, and (4) however, if the states did not respond quickly (by 1975) then federal standards were needed to prop up the state-run system and save it from self-destruction. Thus, paradoxically, federal intervention — while “radical” in terms of the history of workers’ compensation in the US — was actually a conservative remedy that would allow the state-run workers’ compensation system to survive and prosper.

Aftermath and Impact of the National Commission

The Report of the National Commission received front-page coverage in the July 31, 1972 issue of The New York Times. Elsewhere on the page was a story about a continuing investigation into a strange break-in at the Democratic National Headquarters. That was the last time news coverage of workers’ compensation outranked the saga that began at the Watergate office complex and culminated two years later in the resignation of Richard M. Nixon.

One consequence of the preoccupation of the Nixon Administration with political survival is that the recommendation of the National Commission that the President appoint a new commission to provide encouragement and technical assistance to the states to improve their workers’ compensation laws did not occur until 1974, when the Interdepartmental Workers’ Compensation Task Force was established with J. Howard Bunn, Jr., former Chairman of the North Carolina Industrial Commission, as Executive Director. The Task Force made important contributions, issuing a report entitled Workers’ Compensation: Is There a Better Way? (Interdepartmental
Workers' Compensation Task Force, 1977\(^7\) and publishing nine volumes of a Research Report (Interdepartmental Workers' Compensation Task Force, 1979). The Task Force report provided a careful review of the extent of progress of the states after 1972, and noted that the compliance with the 19 essential recommendations had increased from an average of eight per state to 11.5 in 1976, which represented a 44 percent improvement. The Task Force report generally endorsed the analysis of the National Commission, although it specifically recommended the wage-loss approach as the basis for cash benefits and also it called for more emphasis on rehabilitation and reemployment. As to the National Commission's recommendation for federal standards if states did not adopt the 19 essential recommendations by 1975, the Task Force Report was totally void of comment.

If the Republican administration ignored the issue of federal standards, the same could not be said for important elements of Congress. Within a year after the submission of the National Commission's report, Senator Jacob Javits, Republican from New York, and Senator Harrison Williams, Democrat from New Jersey, introduced legislation that provided for federal standards for state workers' compensation laws. On one hand, this legislation probably convinced state policymakers that federal standards were a viable threat, and this spurred reforms in a number of states. On the other hand, the Williams-Javits bill was premature relative to the July 1, 1975 evaluation date for state programs proposed by the National Commission, and the list of federal mandates went well beyond the 19 essential recommendations of the National Commission. I testified before Congress and opposed William-Javits. John Lewis, former Chief Counsel of the National Commission, and I drafted our own version of a federal standards bill that was consistent with the spirit of the National Commission's Report, and offered it to Congress. We were unsuccessful in having our "bill" formally introduced, let alone passed, but then Williams-Javits never was enacted either. In retrospect, probably the worse consequence of the efforts to pass Williams-Javits is that it contributed to the demise of the coalition of employers, insurers, and state agencies that had supported federal standards in 1972.

\(^7\)The 20-page report of the Task Force was submitted on January 19, 1977, the last day of the administration of President Gerald Ford.
There was another unsuccessful attempt to adopt federal standards for state workers' compensation programs during the Administration of Jimmy Carter. Donald Elsberg, Assistant Secretary of Labor for Labor Standards, led an effort to draft federal legislation that would have relied on the enforcement mechanism used in the unemployment insurance program, which was a great improvement over the enforcement schemes proposed by the National Commission. Unfortunately, the runaway inflation made the White House unwilling to support any legislation that might add to cost pressures on employers and thereby aggravate the inflation problem and jeopardize the President's prospects for re-election, and so the federal standards bill was never introduced.\(^8\)

The election of Ronald Reagan in 1981 effectively ended any serious threat of federal legislation mandating federal standards for workers' compensation for the balance of the 20th century and for the foreseeable portion of the 21st century. And with the removal of that threat, a major impetus for reform of state workers' compensation laws — at least along the lines envisaged by the National Commission — disappeared. One indication is the record of compliance with the 19 essential recommendations. As noted, states on average increased their compliance scores from eight in 1972 to 11.5 in 1976. The average compliance score in 2002 stood at 12.9 (U.S. Department of Labor, 2002). Extrapolations of the rate of progress in the last quarter century suggests that full compliance with the 19 essential recommendations will be achieved around the middle of the 23rd century.

Relevancy and Limitations of the National Commission's Analysis for the 21st Century

How should the agenda of a new national commission differ from that of the National Commission of 30-some years ago? While I believe that the basic major objections for a modern workers' compensation program and most of the 84 recommendations are still valid, there are several areas where a modern analysis could usefully supplement or supplant the 1972 Report.

\(^8\) The annual inflation rate exceeded 10 percent in 1979 to 1981, the last three years of the Carter Presidency.
The National Commission obviously provided an incomplete guide on what should be done with permanent partial disability benefits. We essentially ran out of time and passed this issue onto subsequent efforts at the federal and state level. To its credit, the Interdepartmental Task Force did subsequently endorse the wage-loss approach to benefits. And to their credit (I say modestly), John Lewis and I played a major role in the enactment of the 1979 reforms of the Florida workers’ compensation program that incorporated a dual system of PPD benefits (impairment benefits and wage-loss benefits). But realistically (I say regretfully), that reform effort, and in particular the wage-loss benefits component of the Florida law, was unsuccessful.9 I have spent much of the last 30 years conducting research and writing about PPD benefits, and I am now more pessimistic about finding a solution to this crucial aspect of workers’ compensation than I was in 1972.

The National Commission inadvertently also provided an incomplete guide on what should be done with occupational diseases. There was only a brief discussion of the topic in the Report (1972, 50-51), with one recommendation (R.2.13) indicating that states should provide full coverage of work-related diseases.10 There were some other recommendations in that discussion dealing with criteria for coverage, procedures for determining the etiology of a disease, and the apportionment of benefits when there were work-related and nonwork-related causes of impairment or diseases. In retrospect, the difficult issues of the determination of causation and the

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9 Chapter 7 of Berkowitz and Burton (1987) examines the transformation of Florida to a wage-loss state. As recounted there, Governor Robert Graham appointed an advisory committee (which I chaired) to evaluate the 1979 legislation. We unanimously recommended that the law not be signed because of its flaws. He ignored our advice.

10 The Department of Labor continues to monitor the extent of state compliance with the 19 essential recommendations of the National Commission. The latest compilation (U.S. Department of Labor, 2002) shows that all 50 states complied with recommendation R2.13 (All states should provide full coverage for work-related diseases) as of July 2002. However, the only factor considered by the Department of Labor in determining compliance is whether the state limits compensable diseases to those on a statutory schedule. While all states have now eliminated such restrictive schedules, the clear intent of the National Commission was that diseases were to be treated no differently than injuries in determining compensability. In fact, most, if not all, states place more restrictions on diseases than injuries, and, therefore, arguably should not be given credit for complying with recommendation R2.13.
extent of disability for diseases were not adequately explored. In defense of the National Commission, these issues were not seen as compelling issues at the time. To the credit of the Interdepartmental Task Force, they sponsored conferences and research that plumbed these issues much more deeply, and to the credit of Peter Barth, the Executive Director of the National Commission, he subsequently became a leading scholar on this important issue.11

The issues of work-related diseases are a crucial issue for workers’ compensation in the 21st century for several reasons.12 First, the source of disabilities for workers is increasingly due to diseases (or long-term trauma with similar issues) as opposed to injuries resulting from traumatic incidents, and workers’ compensation has more difficulties of applying the work-related tests for diseases than for injuries. Second, the workforce is aging, and older workers are more likely to be disabled from diseases than from injuries. And third, during the last decade, many if not most state workers’ compensation laws have been amended to make it more difficult for diseases (especially those with multiple causation) to receive workers’ compensation benefits.

Medical benefits for workers’ compensation are also an issue that warrants consideration by a new commission. The National Commission was primarily concerned with those states that still imposed arbitrary limits on the duration or amount of medical care. But in the last 25 years, medical benefits have become a much more pressing problem. One reason is that as late as 1981, medical benefits accounted for 33.3 percent of all benefit payments (with cash benefits accounting for the balance), while by 2001 medical benefits were 44.9 percent of all benefits (Williams, Reno, & Burton, 2003, Table 7). Another reason (associated with the first) is that the delivery system for health care in the workers’ compensation program has become much more complex in these last 25 years, with the introduction of a variety of cost-containment devices, ranging from HMOs to fee schedules to utilization review to practice guidelines. In the early 1990s, as discussed in Burton (1997), the rapid escalation of health care costs in

11 The best treatment of occupational diseases is still Barth with Hunt (1980).
12 The issues in this paragraph are examined in greater detail in Burton and Spieler (2001).
workers’ compensation (and in the general health care system) led some analysts or politicians to propose integration of the health care delivery systems for work-related and nonwork-related medical conditions, and the resurgent costs of health care in recent years has led to a resurgence of such proposals.

The rationale for the solution for the woes of state workers’ compensation programs proposed by the National Commission – namely federal standards for state programs to offset the depressing influence of interstate competition for employers that results in meager benefits in order to reduce insurance costs – needs to be reevaluated. Competition in labor and product markets has intensified in the last 30 years as a result of deregulation of important industries, including the workers’ compensation insurance market, and the globalization of the economy.

Are federal standards to place a floor under vicious competition by states to attract employers by lowering workers’ compensation coverage and benefits still a viable solution? If not, is there now a compelling case for a federal workers’ compensation program with uniform protection for all employees and comparable costs for all employers? While this case may not appeal to all participants in the workers’ compensation program, there is this factor: as state legislatures have been persuaded to tighten the eligibility standards for workers’ compensation benefits during the last decade, one possible consequence is that the costs of work-related disabilities have increasingly been shifted to the Social Security Disability Insurance program (Williams et al., 2003, p. 36). How long can the participants in the workers’ compensation program employ the cost-shifting strategy before it backfires and results in federal intervention?

Finally, what about a new National Commission to deal with these issues? Personally, when I was Chairman, I was young, bright, brash, and lucky. At least one of those attributes has, admittedly, forsaken me. But “lucky” may have been the key to my success and to the accomplishments of the National Commission. Because I was lucky to be able to put together on short notice an exceptional group of staff and consultants, most notably Peter Barth, Monroe Berkowitz, and John Lewis, who remain my friends and co-conspirators (I mean, of course, collaborators) to this day. But the
more critical manifestations of good luck were the members of the National Commission, who were willing to listen, learn, and take tough stands when necessary. As an example, let me offer Mel Bradshaw from Liberty Mutual. When he first heard of the spendable earnings concept as the basis for cash benefits, he vigorously asserted that it was a dumb idea. But by the time the Report was issued, Mel endorsed the spendable earnings approach as one of our greatest contributions. And when the word began to circulate that the National Commission was on the verge of endorsing federal standards for state workers' compensation programs and the pressures built on the Commission members to reverse that stand, Mel was the crucial person in persuading the members to stand our ground. Would a 21st century National Commission of Workers' Compensation include such members? Perhaps.

References


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