Solicitor General Canada | Solliciteur général Canada

FILE NO. - DOSSIER N°	VOLUME
1037-60-12	7

SECRETARIAT
SECRÉTARIAT

INACTIVE

FROM DU / TO AU

MS 35 (4-76)

SUBJECT / SUJET: ADMINISTRATION & ORGANIZATION

SUB-SUBJECT / SUJET SEC: ACTS & LEGISLATION - FEDERAL

TITLE / TITRE: CRIMINAL CODE

CAPITAL PUNISHMENT

REFERRED TO - ENVOYÉ À	PURPOSE - OBJET	DATE	INITIALS INITIALES	P.R. DATE CLASSER LE	INITIALS INITIALES	B.F. DATE REPORTER LE

CLOSED

MS 30 (3-76)

INACTIVE
1037-60-12 (Vol. 7)

001637

CLOSED VOLUME

CANADA

VOLUME COMPLET

DATED FROM / À COMPTER DU MAR. 23 / 73 TO / JUSQU' AU JUN. 22 / 73

AFFIX TO TOP OF FILE – À METTRE SUR LE DOSSIER

DO NOT ADD ANY MORE PAPERS – NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE – POUR CORRESPONDANCE ULTÉRIEURE VOIR

FILE NO. – DOSSIER Nº	VOLUME
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Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	June 22, 1973

TO / À: MR. T.G. STREET, Q.C.
CHAIRMAN, NATIONAL PAROLE BOARD

FROM / DE: DEPUTY SOLICITOR GENERAL

SUBJECT / OBJET: Bill C-2 - Capital Punishment

1. During the discussion of the above bill yesterday, before the parliamentary Justice and Legal Affairs Committee, Mr. Raynald Guay, the Parliamentary Assistant to the Minister of Justice, stated that there have been cases in the past where a convicted murderer would have been let out on parole and would have committed another murder or a series of them.

2. After the meeting, he came to me and referred to the case of Leopold Dion in Quebec City.

3. I told him that my information was that Dion had been convicted of murder only once and that he had never been let out on parole after that.

4. I promised Mr. Guay that I would look into the matter. I would like to send him a short note setting out the facts of the Dion case and I would appreciate it if you would have a letter prepared for my signature accordingly.

5. I would appreciate it if this could be done for Monday, so that Mr. Guay could be provided with the information that he has requested before the Committee meets again on the Capital Punishment Bill, Tuesday night.

ORIGINAL SIGNÉ PAR
R. TASSE

RT/hl

Roger Tassé

001639

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

7/11-306

TO / A: DEPUTY SOLICITOR GENERAL

RECEIVED
OFFICE OF THE SOLICITOR GENERAL
JUN 22 1973

(1)

FROM / DE: EXECUTIVE ASSISTANT

cc - Jim Macdonald

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	File Classer
YOUR FILE - V/RÉFÉRENCE	
DATE	22 June 1973

SUBJECT / OBJET: BILL TO EXTEND PARTIAL BAN ON CAPITAL PUNISHMENT - COMMITTEE EXAMINATION

The Standing Parliamentary Committee on Justice and Legal Affairs plans two more Sessions to wrap up its consideration of this Bill:

Tuesday, 26 June, at 8:00 p.m. in Room 269, West Block

and

Thursday, 28 June, at 9:30 a.m. - Room not designated.

The Solicitor General is aware of the first Session, may not yet be aware of the second. Mr. MacKenzie will inform us of the room designated for the Thursday Session as soon as he knows it.

D.G. Cobb

→ c.c.: Mr. Z. Levine - for information.

(2)

ZL
I will try to change the Thursday meeting June 29 from 9:30 AM to the afternoon
WA

(3) DGC - please note
ZL

001640

141-306

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

File R.C.M.P. Classer

TO / À: DEPUTY SOLICITOR GENERAL

FROM / DE: EXECUTIVE ASSISTANT

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE: 22 June 1973

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D.G. Cobb

c.c.: Mr. Z. Levine - for information.

001641

DATE FILE REQUIRED 26th June 1973

[redacted]

"B.F."

To Central Registry:

FILE No. 141-396

Purpose of "B.F."

LETTER DATED 22nd June 1973

Dated ..... **Officer** H. Cobb

note sent 22/6/73

001642

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: DEPUTY SOLICITOR GENERAL

FROM / DE: EXECUTIVE ASSISTANT

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: 22 June 1973

SUBJECT / OBJET: BILL TO EXTEND PARTIAL BAN ON CAPITAL PUNISHMENT - COMMITTEE EXAMINATION

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D.G. Cobb

c.c.: Mr. Z. Levine - for information.

001643

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

P.A.

141-206

TO / A: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY CLASSIFICATION - DE SÉCURITÉ: CONFIDENTIAL

OUR FILE - N/ RÉFÉRENCE:

YOUR FILE - V/ RÉFÉRENCE:

DATE: June 22, 1973

SUBJECT / OBJET: Capital Punishment

1. Attached is a copy of the material prepared by the Department of Justice proposing amendments to Bill C-2, along the lines that you have indicated to the Justice and Legal Affairs Committee yesterday. This material has been sent over to the Clerk of the Committee for distribution to the members.

Roger Tassé

Attach.

c.c. for the information of:

MR. A. J. MacLEOD, Q.C.

001644

TEXT OF BILL C-2 AS IT WOULD READ
IF AMENDED IN ACCORDANCE WITH THE
MOTIONS TO AMEND BILL C-2 PROPOSED
BY THE SOLICITOR GENERAL ON JUNE 21, 1973

BILL C-2

An Act to amend the Criminal Code with respect to persons convicted of murder

R.S., cc. C-34, C-35

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title

1. This Act may be cited as the Criminal Law Amendment (Punishment for Murder) Act.

2. Section 214 of the Criminal Code, as amended by the Criminal Code 1967 Amendment Act, chapter C-35 of the Revised Statutes of Canada, 1970, is repealed.

3. Section 218 of the said Act is repealed and the following substituted therefor:

Punishment for murder

"218. (1) Every one who commits murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

Conditions of granting parole

(2) Notwithstanding anything in the Parole Act and unless the Parliament of Canada otherwise directs, no person

(a) upon whom a sentence of imprisonment for life in respect of murder has been imposed after the coming into force of this section,

(b) upon whom a sentence of imprisonment for life is deemed by section 8 of the Criminal Law Amendment (Punishment for Murder) Act to have been imposed, or

(c) in respect of whom a sentence of death in respect of murder has been commuted after the coming into force of this section to imprisonment for life,

shall be released pursuant to the terms of a grant of parole under the Parole Act unless

(d) at least ten years of that sentence calculated in the manner described in subsection (4) have been served, and

(e) the National Parole Board, by a vote of at least two-thirds of its members, has made a decision that parole under that Act be granted to that person.

Extension of term to be served before eligibility for parole

(3) Notwithstanding paragraph (2) (d), the judge presiding at the trial of an accused who is or was convicted of murder or, where such judge is unable to do so, another judge of the same court may

(a) at the time of sentencing of the accused, in a case referred to in paragraph (2) (a), or

(b) at any time on application made to him within a reasonable time after

(i) the coming into force of this section, in a case referred to in paragraph (2) (b), or

(ii) the execution of an instrument or writing mentioned in subsection 684 (2) declaring that a sentence of death has been commuted, in a case referred to in paragraph (2) (c),

having regard to the character of the accused, the nature of the offence and the circumstances surrounding its commission, and to any recommendation made pursuant to section 596.1, by order substitute for the number of years specified in paragraph (2) (d) a number of years that is not more than twenty but more than ten.

Time spent in custody

(4) In calculating the time referred to in paragraph (2) (d) or the time substituted therefor pursuant to subsection (3), there shall be included any time spent in custody between,

(a) in the case of a sentence of imprisonment for life, the day on which the person was arrested and taken into custody in respect of the offence for which he was sentenced to imprisonment for life and the day the sentence was imposed or was deemed by section 8 of the Criminal Law Amendment (Punishment for Murder) Act to have been imposed, or

(b) in the case of a sentence of death, the day on which the person was arrested and taken into custody in respect of the offence for which he was sentenced to death and the day the sentence was commuted.

Temporary absence and day parole

(5) Notwithstanding the Penitentiary Act and the Parole Act, in the case of any person described in paragraph (2) (a), (b) or (c), no absence may be authorized under section 26 of the Penitentiary Act and no day parole may be granted under section 10 of the Parole Act until the expiration of all but three years of the time referred to in paragraph (2) (d) or the time substituted therefor pursuant to subsection (3), as the case may be.

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unishment

(6) For the purposes of Part XX, the sentence of imprisonment for life prescribed in subsection (1) is a minimum punishment."

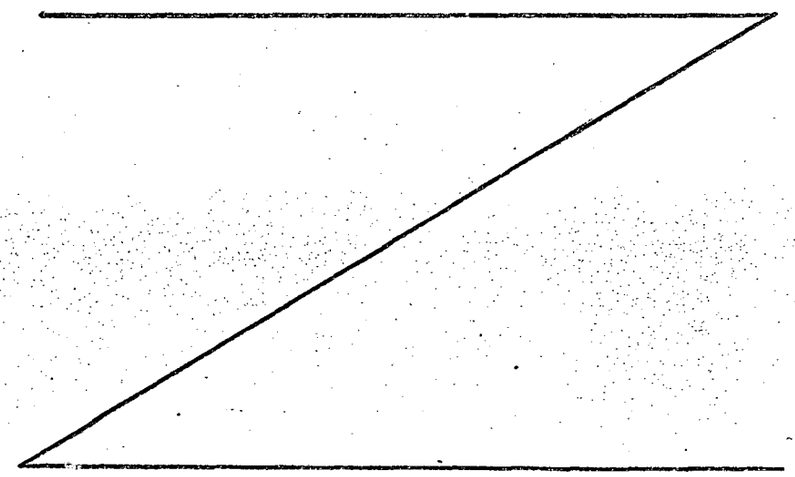
4. Section 511 and subsections 538 (3) and 589 (2) of the said Act are repealed.

5. The said Act is further amended by adding thereto, immediately after section 596, the following section: -

ecommendation
y jury

"596.1 Where a jury finds an accused guilty of murder, the judge who presides at the trial shall, before discharging the jury, put to them the following question:

"You have found the accused guilty of murder and the law requires that I now pronounce a sentence of imprisonment for life against him. Do you wish to make any recommendation with respect to the number of years he must serve before he is eligible for release on parole? You are not required to make any recommendation but if you do, your recommendation will be considered by me when I am considering whether I should substitute for the ten year period, which the law would otherwise require the accused to serve before he is eligible for release on parole, a number of years that is not more than twenty but more than ten." "



6. The definition "sentence" in section 601 of the said Act is repealed and the following substituted therefor:

" "sentence" includes a declaration made under subsection 181 (3), an order made under section 95, 653, 654 or 655 or subsection 218 (3), and a disposition made under subsection 662.1 (1), subsection 663 (1) or subsection 664 (3) or (4); "

7. Subsection 684 (3) of the said Act, as amended by the Criminal Code 1967 Amendment Act, chapter C-35 of the Revised Statutes of Canada, 1970, is repealed and the following substituted therefor:

pproval by overnor n Council f release fter ommutation f sentence

"(3) Notwithstanding any other law or authority, a person

(a) in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment,

(b) upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, or

(c) upon whom a sentence of imprisonment for life is deemed by section 8 of the Criminal Law Amendment (Punishment for Murder) Act to have been imposed,

shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council, but this section does not apply in respect of any absence authorized under section 26 of the Penitentiary Act or any day parole granted under section 10 of the Parole Act. "

Transition

8. Where, either before or after the coming into force of this Act, a person has been convicted of having committed a murder that

(a) was alleged by an indictment to have been committed on, or on or about, a day that is within the period from December 29, 1972 to the coming into force of this Act, or between two days within that period, and

(b) was, at the time alleged by the indictment to have been the time when the murder was committed, punishable by death,

such person shall, if upon the coming into force of this Act he has not been sentenced, be sentenced to imprisonment for life, and, if at that time he has been sentenced to death, that sentence shall be deemed to be a sentence of imprisonment for life imposed by the court that sentenced him to death on the day that it so sentenced him.

Idem

9. (1) Where, after the coming into force of this Act,

(a) proceedings are commenced in respect of a murder alleged by an indictment to have been committed on, or on or about, a day that is within the period from December 29, 1972 to the coming into force of this Act, or between two days the earlier of which is within that period, or

(b) a new trial of a person is commenced for a murder referred to in paragraph (a),

the offence shall be tried and determined, and any punishment in respect of the offence shall be imposed, as if the offence had been committed after the coming into force of this Act.

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(2) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the Criminal Code.

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10. This Act shall come into force on a day to be fixed by proclamation.

LE TEXTE DU BILL C-2 SE LIRAIT COMME SUIT S'IL ÉTAIT MODIFIÉ CONFORMÉMENT A LA MOTION PROPOSÉE PAR LE SOLLICITEUR GENERAL LE 21 JUIN 1973.

Bill C-2

Loi modifiant le Code criminel en ce qui concerne les personnes déclarées coupables de meurtre

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

Titre abrégé

1. La présente loi peut être citée sous le titre: Loi modifiant le droit pénal (peine pour meurtre).

2. L'article 214 du Code criminel, tel qu'il résulte de sa modification par la Loi de 1967 modifiant le Code criminel, chapitre C-35 des Statuts révisés du Canada de 1970, est abrogé.

3. L'article 218 de ladite loi est abrogé et remplacé par ce qui suit:

Peine pour meurtre

"218. (1) Quiconque commet un meurtre est coupable d'un acte criminel et doit être condamné à l'emprisonnement à perpétuité.

Conditions d'octroi de la libération conditionnelle

(2) Nonobstant toute disposition de la Loi sur la libération conditionnelle de détenus et à moins que le Parlement du Canada n'ordonne le contraire, nulle personne

a) à qui une sentence d'emprisonnement à perpétuité pour meurtre a été imposée après l'entrée en vigueur du présent article,

b) à qui une sentence d'emprisonnement à perpétuité est, aux termes de l'article 8 de la Loi modifiant le droit pénal (peine pour meurtre), réputée avoir été imposée, ou

c) relativement à laquelle une sentence de mort pour meurtre a été commuée, après l'entrée en vigueur du présent article, en un emprisonnement à perpétuité,

ne doit être remise en liberté en vertu de l'octroi d'une libération conditionnelle aux termes de la Loi sur la libération conditionnelle de détenus, à moins

d) qu'elle n'ait purgé au moins dix années de cette sentence, calculées de la manière indiquée au paragraphe (4), et

e) que la Commission nationale des libérations conditionnelles n'ait décidé, par un vote d'au moins les deux tiers de ses membres, d'accorder à cette personne la libération conditionnelle visée par cette loi.

Prolongation de la période à purger avant d'être admissible à la libération conditionnelle

(3) Nonobstant l'alinéa (2)d), le juge qui préside le procès d'un accusé qui est ou a été déclaré coupable de meurtre, ou, lorsque ce juge est incapable de ce faire, un autre juge du même tribunal peut,

a) au moment de prononcer la sentence de l'accusé, s'il s'agit d'un cas visé à l'alinéa (2)a), ou

b) à tout moment, sur demande, pourvu que cette demande lui soit présentée dans un délai raisonnable

(i) après l'entrée en vigueur du présent article, s'il s'agit d'un cas visé à l'alinéa (2)b), ou

(ii) après la signature d'un instrument ou d'un écrit mentionné au paragraphe 684(2), déclarant qu'une sentence de mort a été commuée, s'il s'agit d'un cas visé à l'alinéa (2)c),

compte tenu du caractère de l'accusé, de la nature de l'infraction et des circonstances qui ont entouré sa perpétration, ainsi que toute recommandation faite en application de l'article 596.1 remplacer par ordonnance le nombre d'années spécifié à l'alinéa (2)d) par un nombre d'années supérieur à dix mais ne dépassant pas vingt.

Temps passé sous garde

(4) Dans le calcul de la période mentionnée à l'alinéa (2)d) ou de celle par laquelle celle-ci est remplacée en application du paragraphe (3), il doit être inclus toute période passée sous garde,

a) Dans le cas d'une sentence d'emprisonnement à perpétuité, entre le jour où la personne a été arrêtée et incarcérée par suite de l'infraction pour laquelle elle a été condamnée à l'emprisonnement à perpétuité et le jour où la sentence a été imposée ou est réputée, aux termes de l'article 8 de la Loi modifiant le droit pénal (peine pour meurtre), avoir été imposée, ou,

b) dans le cas d'une sentence de mort, entre le jour où la personne a été arrêtée et incarcérée par suite de l'infraction pour laquelle elle a été condamnée à mort et le jour où la sentence a été commuée.

bsence emporaire t libération ondition- elle de jour

(5) Nonobstant la Loi sur les pénitenciers et la Loi sur la libération conditionnelle de détenus, dans le cas de toute personne visée à l'alinéa (2)a), b) ou c), aucune absence ne peut être autorisée en vertu de l'article 26 de la Loi sur les pénitenciers et aucune libération conditionnelle de jour ne peut être accordée en vertu de l'article 10 de la Loi sur la libération conditionnelle de détenus avant la troisième année précédant l'expiration de la période mentionnée à l'alinéa (2)d) ou de la période par laquelle celle-ci est remplacée en application du paragraphe (3).

eine mi- imum

(6) Aux fins de la Partie XX, la sentence d'emprisonnement à perpétuité prescrite au paragraphe (1) est une peine minimum."

4. L'article 511 et les paragraphes 538(3) et 589(2) de ladite loi sont abrogés.

5. Ladite loi est en outre modifiée par l'insertion, immédiatement après l'article 596, de l'article suivant:

ecommandation du ury

"596.1 Lorsqu'un jury déclare un accusé coupable de meurtre, le juge qui préside au procès doit, avant de dissoudre le jury, poser aux jurés la question suivante:

"Vous avez déclaré l'accusé coupable de meurtre et la loi exige que je prononce maintenant contre lui la peine d'emprisonnement à perpétuité. Désirez-vous faire une recommandation quant au nombre d'années qu'il doit purger avant de devenir admissible à la libération conditionnelle? Vous n'êtes pas tenus de faire une recommandation, mais si vous le faites, je tiendrai compte de votre recommandation lorsque j'examinerai si je dois remplacer ou non par une période supérieure à dix ans mais ne dépassant pas vingt ans, la période de dix ans que l'accusé devrait autrement purger en vertu de la loi avant de devenir admissible à la libération conditionnelle." "

6. La définition des termes «sentence» ou «condamnation» figurant à l'article 601 de ladite loi est abrogée et remplacée par ce qui suit:

"«sentence» ou «condamnation» comprend une déclaration faite aux termes du paragraphe 181(3), une ordonnance rendue aux termes de l'article 95, 653, 654 ou 655 ou du paragraphe 218(3), et une décision prise en vertu du paragraphe 662.1(1), du paragraphe 663(1) ou du paragraphe 664(3) ou (4)."

7. Le paragraphe 684(3) de ladite loi, tel qu'il résulte de sa modification par la Loi de 1967 modifiant le Code criminel, chapitre C-35 des Statuts revisés du Canada de 1970, est abrogé et remplacé par ce qui suit:

probation gouverneur en conseil de remise liberté rès comptation la sennce

"(3) Nonobstant toute autre loi ou autorité, une personne,

a) à l'égard de qui une sentence de mort a été commuée en emprisonnement à perpétuité ou en un emprisonnement à temps,

b) à qui une sentence d'emprisonnement à perpétuité a été imposée comme peine minimum, ou

c) à qui une sentence d'emprisonnement à perpétuité est, aux termes de l'article 8 de la Loi modifiant le droit pénal (peine pour meurtre), réputée avoir été imposée,

ne doit pas être remise en liberté de son vivant ou pendant la durée de son emprisonnement, selon le cas, sans l'approbation antérieure du gouverneur en conseil; toutefois cet article ne s'applique pas à l'égard d'une absence autorisée en vertu de l'article 26 de la Loi sur les pénitenciers ou d'une libération conditionnelle de jour accordée en vertu de l'article 10 de la Loi sur la libération conditionnelle de détenus." "

lesure transitoire

8. Lorsque, avant ou après l'entrée en vigueur de la présente loi, une personne a été déclarée coupable d'un meurtre

a) dont un acte d'accusation allègue qu'il a été commis un jour ou vers un jour se trouvant dans la période allant du 29 décembre 1972 à l'entrée en vigueur de la présente loi, ou entre deux jours se trouvant dans cette période, et

b) qui était, à l'époque où l'acte d'accusation allègue qu'il a été commis, punissable de mort,

cette personne doit, si elle n'a pas été condamnée lors de l'entrée en vigueur de la présente loi, être condamnée à l'emprisonnement à perpétuité et, si à cette époque elle a été condamnée à mort, cette sentence doit être réputée

être une sentence d'emprisonnement à perpétuité qu'a imposée la cour qui l'a condamnée à mort le jour où elle l'a ainsi condamné.

Idem

9. (1) Lorsque, après l'entrée en vigueur de la présente loi,

a) des procédures sont commencées relativement à un meurtre dont un acte d'accusation allègue qu'il a été commis un jour où vers un jour se trouvant dans la période allant du 29 décembre 1972 à l'entrée en vigueur de la présente loi, ou entre deux jours dont le plus ancien se trouve dans cette période, ou

b) un nouveau procès d'une personne est commencé relativement à un meurtre visé à l'alinéa a),

l'infraction doit être jugée et décidée, et toute peine relative à cette infraction doit être imposée, comme si ladite infraction avait été commise après l'entrée en vigueur de la présente loi.

as où les rocédures ont com- encées

(2) Aux fins du présent article, des procédures relatives à une infraction sont réputées avoir été commencées lors de la présentation d'un acte d'accusation en application des dispositions de la Partie XVII du Code criminel.

ntrée en igueur

10. La présente loi entrera en vigueur à une date qui sera fixée par proclamation.

Articles 1 à 7 du bill

Proposé par

Que le Bill C-2 soit modifié par le retranchement des articles 1 à 7 et leur remplacement par ce qui suit:

Titre abrégé

'1. La présente loi peut être citée sous le titre: Loi modifiant le droit pénal (peine pour meurtre).

2. L'article 214 du Code criminel, tel qu'il résulte de sa modification par la Loi de 1967 modifiant le Code criminel, chapitre C-35 des Statuts revisés du Canada de 1970, est abrogé.

3. L'article 218 de ladite loi est abrogé et remplacé par ce qui suit:

Peine pour meurtre

"218. (1) Quiconque commet un meurtre est coupable d'un acte criminel et doit être condamné à l'emprisonnement à perpétuité.

Conditions d'octroi de la libération conditionnelle

(2) Nonobstant toute disposition de la Loi sur la libération conditionnelle de détenus et à moins que le Parlement du Canada n'ordonne le contraire, nulle personne

a) à qui une sentence d'emprisonnement à perpétuité pour meurtre a été imposée après l'entrée en vigueur du présent article,

b) à qui une sentence d'emprisonnement à perpétuité est, aux termes de l'article 8 de la Loi modifiant le droit pénal (peine pour meurtre), réputée avoir été imposée, ou

c) relativement à laquelle une sentence de mort pour meurtre a été commuée, après l'entrée en vigueur du présent article, en un emprisonnement à perpétuité,

ne doit être remise en liberté en vertu de l'octroi d'une libération conditionnelle aux termes de la Loi sur la libération conditionnelle de détenus, à moins

d) qu'elle n'ait purgé au moins dix années de cette sentence, calculées de la manière indiquée au paragraphe (4), et

e) que la Commission nationale des libérations conditionnelles n'ait décidé, par un vote d'au moins les deux tiers de ses membres, d'accorder à cette personne la libération conditionnelle visée par cette loi.

Prolongation de la période à purger avant d'être admissible à la libération

(3) Nonobstant l'alinéa (2)d), le juge qui préside le procès d'un accusé qui est ou a été déclaré coupable de meurtre, ou, lorsque ce juge est incapable de ce faire, un autre juge du même tribunal peut,

a) au moment de prononcer la sentence de l'accusé, s'il s'agit d'un cas visé à l'alinéa (2)a), ou

b) à tout moment, sur demande, pourvu que cette demande lui soit présentée dans un délai raisonnable

(i) après l'entrée en vigueur du présent article, s'il s'agit d'un cas visé à l'alinéa (2)b), ou

(ii) après la signature d'un instrument ou d'un écrit mentionné au paragraphe 684(2), déclarant qu'une sentence de mort a été commuée, s'il s'agit d'un cas visé à l'alinéa (2)c),

compte tenu du caractère de l'accusé, de la nature de l'infraction et des circonstances qui ont entouré sa perpétration, ainsi que toute recommandation faite en application de l'article 596.1 remplacer par ordonnance le nombre d'années spécifié à l'alinéa (2)d) par un nombre d'années supérieur à dix mais ne dépassant pas vingt.

Temps passé sous garde

(4) Dans le calcul de la période mentionnée à l'alinéa (2)d) ou de celle par laquelle celle-ci est remplacée en application du paragraphe (3), il doit être inclus toute période passée sous garde,

a) dans le cas d'une sentence d'emprisonnement à perpétuité, entre le jour où la personne a été arrêtée et incarcérée par suite de l'infraction pour laquelle elle a été condamnée à l'emprisonnement à perpétuité et le jour où la sentence a été imposée ou est réputée, aux termes de l'article 8 de la Loi modifiant le droit pénal (peine pour meurtre), avoir été imposée, ou,

b) dans le cas d'une sentence de mort, entre le jour où la personne a été arrêtée et incarcérée par suite de l'infraction pour laquelle elle a été condamnée à mort et le jour où la sentence a été commuée.

Absence temporaire et libération conditionnelle de jour

(5) Nonobstant la Loi sur les pénitenciers et la Loi sur la libération conditionnelle de détenus, dans le cas de toute personne visée à l'alinéa (2)a), b) ou c), aucune absence ne peut être autorisée en vertu de l'article 26 de la Loi sur les pénitenciers et aucune libération conditionnelle de jour ne peut être accordée en vertu de l'article 10 de la Loi sur la libération conditionnelle de détenus avant la troisième année précédant l'expiration de la période mentionnée à l'alinéa (2)d) ou de la période par laquelle celle-ci est remplacée en application du paragraphe (3).

Peine minimum

(6) Aux fins de la Partie XX, la sentence d'emprisonnement à perpétuité prescrite au paragraphe (1) est une peine minimum."

4. L'article 511 et les paragraphes 538(3) et 589(2) de ladite loi sont abrogés.

5. Ladite loi est en outre modifiée par l'insertion, immédiatement après l'article 596, de l'article suivant:

Recommandation du jury

"596.1 Lorsqu'un jury déclare un accusé coupable de meurtre, le juge qui préside au procès doit, avant de dissoudre le jury, poser aux jurés la question suivante:

"Vous avez déclaré l'accusé coupable de meurtre et la loi exige que je prononce maintenant contre lui la peine d'emprisonnement à perpétuité. Désirez-vous faire une recommandation quant au nombre d'années qu'il doit purger avant de devenir admissible à la libération conditionnelle? Vous n'êtes pas tenus de faire une recommandation, mais si vous le faites, je tiendrai compte de votre recommandation lorsque j'examinerai si je dois remplacer ou non par une période supérieure à dix ans mais ne dépassant pas vingt ans, la période de dix ans que l'accusé devrait autrement purger en vertu de la loi avant de devenir admissible à la libération conditionnelle." "

6. La définition des termes «sentence» ou «condamnation» figurant à l'article 601 de ladite loi est abrogée et remplacée par ce qui suit:

" «sentence» ou «condamnation» comprend une déclaration faite aux termes du paragraphe 181(3), une ordonnance rendue aux termes de l'article 95, 653, 654 ou 655 ou du paragraphe 218(3), et une décision prise en vertu du paragraphe 662.1(1), du paragraphe 663(1) ou du paragraphe 664(3) ou (4)."

7. Le paragraphe 684(3) de ladite loi, tel qu'il résulte de sa modification par la Loi de 1967 modifiant le Code criminel, chapitre C-35 des Statuts revisés du Canada de 1970, est abrogé et remplacé par ce qui suit:

Approbation du gouverneur en conseil de la remise en liberté après commutation de la sentence

"(3) Nonobstant toute autre loi ou autorité, une personne,

a) à l'égard de qui une sentence de mort a été commuée en emprisonnement à perpétuité ou en un emprisonnement à temps,

b) à qui une sentence d'emprisonnement à perpétuité a été imposée comme peine minimum, ou

c) à qui une sentence d'emprisonnement à perpétuité est, aux termes de l'article 8 de la Loi modifiant le droit pénal (peine pour meurtre), réputée avoir été imposée,

ne doit pas être remise en liberté de son vivant ou pendant la durée de son remprisonnement, selon le cas, sans l'approbation antérieure du gouverneur en conseil; toutefois cet article ne s'applique pas à l'égard d'une absence autorisée en vertu de l'article 26 de la Loi sur les pénitenciers ou d'une libération conditionnelle de jour accordée en vertu de l'article 10 de la Loi sur la libération conditionnelle de détenus." "

Clauses 1 to 7

Moved by

That Bill C-2 be amended by striking out clauses 1 to 7 and substituting the following:

Short title

"1. This Act may be cited as the Criminal Law Amendment (Punishment for Murder) Act.

2. Section 214 of the Criminal Code, as amended by the Criminal Code 1967 Amendment Act, chapter C-35 of the Revised Statutes of Canada, 1970, is repealed.

3. Section 218 of the said Act is repealed and the following substituted therefor:

Punishment for murder

"218. (1) Every one who commits murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

Conditions of granting parole

(2) Notwithstanding anything in the Parole Act and unless the Parliament of Canada otherwise directs, no person

(a) upon whom a sentence of imprisonment for life in respect of murder has been imposed after the coming into force of this section,

(b) upon whom a sentence of imprisonment for life is deemed by section 8 of the Criminal Law Amendment (Punishment for Murder) Act to have been imposed,

or

(c) in respect of whom a sentence of death in respect of murder has been commuted after the coming into force of this section to imprisonment for life,

shall be released pursuant to the terms of a grant of parole under the Parole Act unless

(d) at least ten years of that sentence calculated in the manner described in subsection (4) have been served, and

(e) the National Parole Board, by a vote of at least two-thirds of its members, has made a decision that parole under that Act be granted to that person.

Extension of term to be served before eligibility for parole

(3) Notwithstanding paragraph (2)(d), the judge presiding at the trial of an accused who is or was convicted of murder or, where such judge is unable to do so, another judge of the same court may

(a) at the time of sentencing of the accused, in a case referred to in paragraph (2)(a), or

(b) at any time on application made to him within a reasonable time after

(i) the coming into force of this section, in a case referred to in paragraph (2)(b), or

(ii) the execution of an instrument or writing mentioned in subsection 684(2) declaring that a sentence of death has been commuted, in a case referred to in paragraph (2)(c),

having regard to the character of the accused, the nature of the offence and the circumstances surrounding its commission, and to any recommendation made pursuant to section 596.1, by order substitute for the number of years specified in paragraph (2)(d) a number of years that is not more than twenty but more than ten.

Time spent in custody

(4) In calculating the time referred to in paragraph (2)(d) or the time substituted therefor pursuant to subsection (3), there shall be included any time spent in custody between,

(a) in the case of a sentence of imprisonment for life, the day on which the person was arrested and taken into custody in respect of the offence for which he was sentenced to imprisonment for life and the day the sentence was imposed or was deemed by section 8 of the Criminal Law Amendment (Punishment for Murder) Act to have been imposed, or

(b) in the case of a sentence of death, the day on which the person was arrested and taken into custody in respect of the offence for which he was sentenced to death and the day the sentence was commuted.

Temporary absence and day parole

(5) Notwithstanding the Penitentiary Act and the Parole Act, in the case of any person described in paragraph (2)(a), (b) or (c), no absence may be authorized under section 26 of the Penitentiary Act and no day parole may be granted under section 10 of the Parole Act until the expiration of all but three years of the time referred to in paragraph (2)(d) or the time substituted therefor pursuant to subsection (3), as the case may be.

Minimum punishment

(6) For the purposes of Part XX, the sentence of imprisonment for life prescribed in subsection (1) is a minimum punishment."

4. Section 511 and subsections 538(3) and 589(2) of the said Act are repealed.

5. The said Act is further amended by adding thereto, immediately after section 596, the following section:

Recommendation by jury

"596.1 Where a jury finds an accused guilty of murder, the judge who presides at the trial shall, before discharging the jury, put to them the following question:

"You have found the accused guilty of murder and the law requires that I now pronounce a sentence of imprisonment for life against him. Do you wish to make any recommendation with respect to the number of years he must serve before he is eligible for release on parole? You are not required to make any recommendation but if you do, your recommendation will be considered by me when I am considering whether I should substitute for the ten year period, which the law would otherwise require the accused to serve before he is eligible for release on parole, a number of years that is not more than twenty but more than ten." "

6. The definition "sentence" in section 601 of the said Act is repealed and the following substituted therefor:

" "sentence" includes a declaration made under subsection 181(3), an order made under section 95, 653, 654 or 655 or subsection 218(3), and a disposition made under subsection 662.1(1), subsection 663(1) or subsection 664(3) or (4);"

7. Subsection 684(3) of the said Act, as amended by the Criminal Code 1967 Amendment Act, chapter C-35 of the Revised Statutes of Canada, 1970, is repealed and the following substituted therefor:

Approval by Governor in Council of release after commutation of sentence

"(3) Notwithstanding any other law or authority, a person

(a) in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment,

(b) upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, or

(c) upon whom a sentence of imprisonment for life is deemed by section 8 of the Criminal Law Amendment (Punishment for Murder) Act to have been imposed,

shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council, but this section does not apply in respect of any absence authorized under section 26 of the Penitentiary Act or any day parole granted under section 10 of the Parole Act."

Clauses 10 to 12

Moved by

That Bill C-2 be amended by striking out clauses 10 and 11 and by renumbering clause 12 as clause 10.

Articles 10 à 12 du bill

Proposé par

Que le Bill C-2 soit modifié par le retranchement des articles 10 et 11 et par le renumérotage de l'article 12, qui devient l'article 10.

Clause 8

Moved by

That Bill C-2 be amended

(a) by striking out line 22 on page 4 and substituting the following:

'period, and'

(b) by striking out line 26 on page 4 and substituting the following:

'death,'

(c) by striking out lines 27 to 30 on page 4. and

(d) by striking out line 38 on page 4 and substituting the following:

'death on the day that it so sentenced him.'

Article 8 du bill

Proposé par

Que le Bill C-2 soit modifié

a) par le retranchement de la ligne 21, à la page 4, et son remplacement par ce qui suit:

'trouvant dans cette période, et'

b) par le retranchement de la ligne 24, à la page 4, et son remplacement par ce qui suit:

'sable de mort,'

c) par le retranchement des lignes 25 à 28, à la page 4. et

d) par le retranchement de la ligne 36, à la page 4, et son remplacement par ce qui suit:

'cour qui l'a condamnée à mort le jour où elle l'a ainsi condamné.'

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: **THE SOLICITOR GENERAL**

FROM / DE: **DEPUTY SOLICITOR GENERAL**

SECURITY - CLASSIFICATION - DE SÉCURITÉ: **CONFIDENTIAL**

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: **June 20, 1973**

SUBJECT / OBJET: **Parole of Lifers**

Since December 29, 1972, no statutory provision requires the Parole Board to get the concurrence of Cabinet before paroling an inmate serving a commuted death sentence or a mandatory life sentence. While provisions embodying the same or a similar requirement may eventually again become part of the law, the present issue is the procedure for considering paroles in the period before any new legislation takes effect.

The limitations now existing on the jurisdiction of the Parole Board are to be found in Parole Regulations made by the Governor in Council. These regulations still require the Parole Board to get the approval of Cabinet before paroling an inmate serving a commuted death sentence. They also require the approval of Cabinet where the inmate has been sentenced to a mandatory life term after January 4, 1968. The Board may not recommend such cases until the inmate has served ten years from the date of his arrest for the offence. There remain a number of cases where inmates were convicted of non-capital murder before January 4, 1968. In this class of case, the Board is not by its regulations required to get the approval of Cabinet and may parole at any time, although the inmate must normally have served seven years.

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001670

The Parole Board, in conformity with its previous policy, has continued to lay before you its recommendations for those convicted of non-capital murder before January 4, 1968. There are now thirteen cases of this kind before you, (a list is attached as Appendix "A") recommending parole be approved by Cabinet, and more may be expected. I recommend that the Board be informed that this type of case will no longer be sent to Cabinet, and that the Board is free to reach a decision. This recommendation is perhaps strengthened by the fact that there is some question as to whether it is legally proper to lay the cases before Cabinet, having regard to the exclusive parole jurisdiction conferred by the Parole Act and which is unfettered by regulations in these instances. There is also the factor that legal action on behalf of inmates is apparently in prospect if Cabinet approval continues to be sought.

ORIGINAL SIGNÉ PAR
R. TASSE

Roger Tassé,
Deputy Solicitor General

Att.

J.H. HOLLIES/mab

APPENDIX "A"

Murder Cases Recommended for Parole

No.	Name	Category
[redacted]	[redacted]	Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital
		Non-capital

All of the above were convicted before January 4, 1968

Deputy Solicitor General
Canada

Solliciteur général adjoint
Canada

June 19, 1973

Note to Mr. R. L. duPlessis,
Legislation Section,
Department of Justice

Re: Capital Punishment

I am attaching a copy of the Memorandum to Cabinet, dated June 8, 1973 relating to Capital Punishment - Bill C-2. There is a possibility that this Memorandum will be discussed in Cabinet on Thursday. If so, the proposed legislation might be required in a rush.

Roger Tassé

001673

Ottawa, Ontario,
K1A 0P8

June 14, 1973

Mr. R. F. Charron,
Acting Supervisor of Cabinet Documents,
Privy Council Office,
Room 321, East Block,
Parliament Buildings,
Ottawa, Ontario,
K1A 0A3

Dear Mr. Charron:

Re: Capital Punishment - Bill C-2
Re: Peine capitale - Bill C-2

I now enclose 100 copies of the Memorandum to Cabinet dated, June 8, 1973 relating to the above subject. It would be appreciated if this matter could be placed on the Cabinet Agenda as soon as possible.

Yours sincerely,

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

Roger Tassé,
Deputy Solicitor General

/ROPESKETT

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: **SOLICITOR GENERAL**

FROM / DE: **DEPUTY SOLICITOR GENERAL**

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE – N/RÉFÉRENCE
YOUR FILE – V/RÉFÉRENCE
DATE
June 12, 1973

SUBJECT / OBJET: **Capital Punishment - Bill C-2**

1. The Memorandum to Cabinet regarding the above has been revised to incorporate the comments that you had made on my memorandum to you dated May 25th which is attached.

2. If the document meets with your approval you might wish to send it to the Minister of Justice for his concurrence. A draft letter for your signature is also attached, should you decide to do so.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

Attach.

Roger Tassé

RT/ROP

001675

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE – N/RÉFÉRENCE
YOUR FILE – V/RÉFÉRENCE
DATE
June 8, 1973

SUBJECT / OBJET: Draft Memorandum to Cabinet on Capital Punishment - Bill C-2

With reference to your note herein of June 7 last, I return the draft Memorandum to Cabinet with paragraphs 3 and 4 revised to reflect what I understand are the Minister's wishes.

The original page 1 dated May 25, 1973, is also attached.

Atts.

A. J. MacLeod.

AJM:ROM

001676

CONFIDENTIAL

June 8, 1973

MEMORANDUM TO THE CABINET

Re: Capital Punishment - Bill C-2

PROBLEM

1. On January 25, 1973, the undersigned introduced Bill C-2, an Act to amend the Criminal Code with respect to persons convicted of murder. That bill would extend for five years the 1967 law on capital punishment which expired on December 29, 1972, and which limited the death penalty to the murder of a police or prison officer.

2. Bill C-2 is comparable to the 1967 law except that it substitutes the expressions "murder punishable by death" and "murder punishable by life imprisonment" for the expressions "capital" and "non-capital" murders. This change was made for purposes of clarity.

3. Since the introduction of Bill C-2, concern has been expressed in Parliament and in the press about the increase in recent years in the number of murders. This seems to reflect a feeling that the 1967-72 law was not a sufficient deterrent to murderers. A related concern is the belief, even on the part of some abolitionists, that the rules and practices for the release of convicted murderers on temporary absence or parole are too lax. A number of Members voted for the Bill on second reading, but indicated that they would not support it on third reading unless changes were made in it. Appendix "A" summarizes the law concerning the release on parole or temporary absence of inmates convicted of murders.

4. Given present indications as to the manner in which Members of Parliament will vote, Bill C-2 might, unless amended, be defeated, which would leave the government with the difficult task of administering the pre-1967 law.

OBJECTIVE

5. This memorandum seeks approval for the preparation of amendments to Bill C-2 that would provide for the total abolition of capital punishment and the substitution therefor of life imprisonment, subject to statutory conditions regarding the release of murderers on temporary absence or parole.

FACTORS

6. A majority of Canadians seem to think that capital punishment is necessary as a deterrent. It is probably correct to assume that the element of deterrence is considered by Canadians to be necessary to protect the public against persons who have already been convicted of murder and persons who, in the absence of appropriate deterrence, are potential murderers. In this context, the question to be resolved appears to be this: In relation to life sentences for murder, what conditions are reasonably necessary, in terms of deterrence, for the protection of the public while still leaving the offender with a reasonable hope of ultimately returning to society as a useful citizen?

..2

7. Amendments to the criminal law calculated to achieve the objective set out in paragraph 5, having regard to the current state of public opinion, would involve the application of some, if not all, of the following considerations:

(a) The death penalty is not the most effective method of dealing with persons who are convicted of murder:

The advantage of the death penalty is that it punishes the offender and has deterrent value; how great a deterrent it is forms the basis of much of the current argument over capital punishment; it does not rehabilitate.

The argument for life imprisonment is that, depending upon the length of time to be spent in custody, it does punish; it has deterrent value, to a greater or lesser extent; it holds some promise of rehabilitating the offender.

(b) The conditions of the custody of persons convicted of the most serious types of murder should be more stringent than they are in less reprehensible cases:

The advantage would be that the law would continue to recognize, in terms of punishment and deterrence, the distinctions that have previously existed between capital and non-capital murder.

(c) The law should require a mandatory minimum sentence to be served in custody by an offender who is sentenced to life imprisonment for murder:

The argument for such sentences is that, in the eyes of the public, they have both punitive and deterrent value and are probably necessary if imprisonment is to be accepted as an alternative to the death sentence.

The argument against such sentences is that the longer the period of time (e.g. 20 years) that an offender is in custody, the less likely, as a rule, is the prison experience to be rehabilitative. A period of mandatory custody that leaves little or no hope may tend to lead the imprisoned man to one or more of the following courses: suicide, escape at any cost, including the lives of prison officers, trouble-making in the institution by way of fomenting disturbances to show his hatred of society, or withdrawal into a shell until he becomes, in effect, a vegetable. His marriage, if any, is not likely to last. Where, by reason of a long minimum sentence in custody, all reasonable hope of return to a useful life in the community is destroyed, the result is more likely to be torture than punishment.

(d) The trial judge should have a function in fixing the minimum amount of time to be served in custody by an offender who is sentenced to life imprisonment for murder:

The advantage is that the judge, at the time of sentence, is aware of local public sentiment (in terms of punishment and deterrence), the circumstances of the offence, and some of the characteristics of the offender, presumably but not necessarily including his rehabilitative needs.

Some of the disadvantages are that, because in Canada there are several hundreds of judges who preside over murder trials, no two cases would be dealt with alike, and there could soon be a cry for "equal justice".

In addition, if this is a logical role for a judge in a murder trial, there would seem to be no reason for not extending that role to life sentences arising out of armed robbery, rape, kidnapping, hijacking and the like, where life sentences are not mandatory but are sometimes imposed.

(e) Temporary absence or day parole without escort for an offender sentenced to life imprisonment for murder should be restricted during the minimum period that he is required to serve in custody:

The advantage of restrictions is that they would tend to satisfy the public that the punishment for murder is appropriately punitive and deterrent and that, for an extensive period of time, the public will be protected, as far as it is humanly possible to do so, from the offender.

The disadvantage of such a condition is that, for an extensive period of time, many rehabilitative programs involving the offender in the community could not be carried out.

(f) In the most serious and reprehensible cases of murder, parole should be granted after the mandatory minimum period of custody, only with the approval of two-thirds of the members of the Parole Board:

The advantage of not requiring approval of the full Board is that one or two members who might wish to dissent would not, by disagreeing, have to sacrifice their principles or, by dissenting, have to endure the hostility or disdain of the remaining members.

The disadvantage of requiring only two-thirds is presumably that the public would be better satisfied that it is being protected if unanimous approval were required. Such a requirement would also add to the punitive and deterrent value of the life sentence murder.

(g) The Governor in Council should perhaps have authority under the law to reduce the mandatory minimum term of custody to a lesser term of years:

The advantage of making it possible for the Governor in Council to reduce the minimum period of custody is that it would enable the government, in proper cases involving the need for clemency, to alleviate the harshness of the law or the judge's judgment, having regard to all the circumstances of the case.

The disadvantage is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

COURSES OPEN TO THE GOVERNMENT

8. Among the courses open to the government would seem to be the following:

A. Let Bill C-2 continue, without government amendment, to decision by the House.

The danger of this is that, given the present mood of the House of Commons, the Bill might well be defeated, which would leave the government with the difficult task of having to administer, without amendment, the pre-1967 law.

B. The undersigned proposes that Bill C-2 be amended to give effect to most of the factors set out in paragraph 7 above, in a manner that is likely to be supported by a majority of the House, as follows:

(a) there would be a total abolition of capital punishment for an indefinite period;

(b) "murder" would be defined as it was prior to 1961 (see Appendix "B") and there would be no distinction between "capital" and "non-capital" murder, such as has existed since 1961;

(c) the sentence for murder would be a life sentence;

(d) in the case of "murder" the following conditions would apply:

(i) the minimum period of custody set out in the Criminal Code would be ten years, but the trial judge would have authority, at the time of sentencing, to impose a further minimum period of custody of all or any part of an additional ten years;

..5

(ii) no temporary absence or day parole, without escort, would be permitted until three years from the expiration of the minimum period, as fixed by the statute or imposed by the trial judge, as the case may be;

(iii) no full parole would be authorized during the minimum period of custody, as fixed by the statute or imposed by the trial judge, and thereafter only if two-thirds of the members of the Parole Board agreed; and

(e) an extension of the minimum period of custody could be appealed to the court of appeal.

9. These conditions are designed to strengthen the screening process for the release from custody of convicted murderers serving life sentences while jeopardizing, as little as possible, the rehabilitation programs of federal correctional services.

10. To accept the proposals described in paragraph "B" above raises questions as to the rules that should govern the release on temporary absence or parole of persons who have already been convicted of murders. The new rules would be more restrictive than current rules in terms of years an inmate would be required to stay in custody and the granting of temporary absences and parole. It is suggested that these new rules should not have retroactive effect, and the present law should continue to apply to cases that have arisen or will arise prior to the coming into force of the proposed legislation.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

11. There would seem to be no obligation on the government to discuss the merits of any such proposed legislation with the provincial governments. There were no formal discussions with the provinces prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

12. The undersigned has consulted with the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

13. In the opinion of the undersigned, the proposals for amending Bill C-2 outlined above are likely to be preferred by a majority of Canadians to the scheme contained in Bill C-2.

CAUCUS CONSULTATION

14. There should be Caucus consultation after Cabinet has reached a tentative decision on the issues involved.

..6

LIBERAL FEDERATION

15. Not applicable.

RECOMMENDATION

16. The undersigned recommends that Cabinet should instruct the Department of Justice to prepare whatever amendments to Bill C-2 are necessary to implement paragraph 8B of this submission, and that the undersigned be authorized to move these amendments to Bill C-2 at an appropriate time when the Bill is under study by the Justice and Legal Affairs Committee.

Respectfully submitted,

_____
Solicitor General

I concur

_____
Minister of Justice

Law Relating to Parole and Temporary Absence of Inmates Serving Sentences Upon Conviction for Murder

Regulations under the Parole Act

Regulation 2(3) provides that a person who is serving a sentence of imprisonment to which a sentence of death has been commuted either before or after the coming into force of this subsection (i.e., capital murder) or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment after the coming into force of this subsection (i.e., non-capital murder) shall serve the entire term of the sentence of imprisonment unless, upon the recommendation of the Board, the Governor in Council otherwise directs.

Regulation 2(4) provides that the Board shall not recommend a parole, in a case coming within subsection (3), until at least ten years of the term of imprisonment minus

(a) in the case of a sentence of imprisonment for life (i.e., non-capital murder), the time spent in custody from the day on which the inmate was arrested and taken into custody in respect of the offence for which he was sentenced to imprisonment for life to the day the sentence was imposed, have been served; or

(b) in the case of a sentence of death which has been commuted (i.e., capital murder), the time spent in custody from the day on which the inmate was arrested and taken into custody in respect of the offence for which he was sentenced to death to the day the sentence was commuted, have been served.

Temporary Absence

Section 26 of the Penitentiary Act provides, in relation to all inmates of penitentiaries, including murderers serving life sentences, as follows:

" 26. Where, in the opinion of the Commissioner or the officer in charge of a penitentiary, it is necessary or desirable that an inmate should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate, the absence may be authorized from time to time

(a) by the Commissioner, for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the inmate, or

(b) by the officer in charge, for a period not exceeding fifteen days for medical reasons and for a period not exceeding three days for humanitarian reasons or to assist in the rehabilitation of the inmate."

212. Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or any offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

(a) he means to cause bodily harm for the purpose of

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence,

and the death ensues from the bodily harm;

(b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;

(c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or

(d) he uses a weapon or has it upon his person

(i) during or at the time he commits or attempts to commit the offence, or

(ii) during or at the time of his flight after committing or attempting to commit the offence,

and the death ensues as a consequence.

141-206

Ottawa, Ontario
K1A 0P8

June 14, 1973

File
Classer

Mr. R.G. Robertson,
Clerk of the Privy Council,
Privy Council Office,
East Block,
Ottawa.

Dear Mr. Robertson,

In my letter of June 7, 1973 I dealt with the two bills that I have before the House of Commons - the Capital Punishment bill and the bill amending the Parole Act. As I indicated in my letter, it is my opinion that both bills must be passed by Parliament before the Summer adjournment and I propose to raise the matter directly with the House Leader, the Honourable Allan MacEachen.

I would like, in this letter, to outline our legislative plans for the next session of Parliament which, presumably, could start in September.

My department had a number of legislative items in the list of proposals for the 1973-74 legislative program that was attached to Cabinet Document 545-73 dated May 25, 1973. I propose to comment on each of these items in the order in which they appear on that list.

The first item is the Criminal Records Act. This item is still essential. When the legislation was passed a few years ago, the Government had undertaken to carefully monitor the operations of the Act and to come back before Parliament with any proposals for change that might be required. The Act has been under review in the department for some time now and a number of major weaknesses have been identified that require corrective action on the part of Parliament. Our policy memorandum should be ready for consideration by Cabinet well before September 7, 1973.

The next item on the list is the Parole Act. As you know, there is a bill currently before Parliament proposing that the membership of the National Parole Board be increased by ten additional persons as ad hoc members. It is not my intention to proceed with further amendments to the Parole Act at the present time, except along the lines and within the context that I will discuss later in this letter.

The third legislative item on the list is the Prisons and Reformatories Act. This item is still considered essential. It would be my intention to propose

Copies ow: 140-6
140-35

that legislation be enacted generally along the lines mentioned in the text that appears on your list under the heading "Remarks". The department had received approval from Cabinet to proceed with the preparation of legislation along these lines, about two years ago, and to discuss these proposals with the provinces. For a number of reasons, these discussions have never taken place. I have asked, however, that our departmental position vis-à-vis this legislation be reviewed in the light of the developments that have taken place in the last two years. In so far as we are concerned, the decisions that were made by Cabinet at the time are still valid and it is my intention to discuss our proposals with my provincial colleagues at the Federal-Provincial Conference that is being proposed for late September or early October. Since the matter has already been before Cabinet and since we do not propose, at least for the time being, any change to the decisions that were made at the time, I would assume that it would be sufficient for your purposes if we were to report to Cabinet on our discussions with the provinces, immediately after they have been completed.

The next item on the list is the Young Offenders Act. This legislation continues to rank very high on our list of priorities. We are currently reviewing the bill that was presented to the House of Commons during the last session of Parliament, and that died on the Orders of the Day, in the light of the many comments that were made while the bill was being examined by the Parliamentary Committee on Justice and Legal Affairs, as well as outside the House, with a view to improving the proposed legislation. We have also had discussions with the Department of National Health and Welfare with a view to harmonizing the policies and programs of the two departments in respect of youth in trouble with the law. Both my department and the Department of National Health and Welfare are about to embark on a joint study of these policies and programs as part of the broader review of the federal government policies and programs in the field of social services undertaken by the Department of National Health and Welfare in conjunction with the provinces. It is expected that this study will be completed before the end of the current calendar year. The federal plan for the reintroduction of the Young Offenders bill is also a question that the provinces are likely to wish to discuss at the proposed Federal-Provincial Conference for the Fall. I would expect that we should be ready to come back before Cabinet on this important question very early in 1974 with concrete proposals for the reintroduction of the Young Offenders bill soon thereafter.

The Canada Corrections Act that appears on the list of non-priority items is one that is receiving much of our attention at the present time, in the Ministry. We are currently engaged in a review of our policies in the field of corrections, including both the Penitentiary Services and the Parole Services, and I am hopeful that we will be in a position to present for examination by Cabinet during the latter part of the month of July, a memorandum proposing a set of objectives, policies and priorities and strategies in the field of corrections. A working paper setting out the federal position in the field of corrections could then follow, which could be discussed at the Federal-Provincial Fall Conference and serve as a basis for further federal-provincial discussions. It does not seem that there is much hope that we will

[redacted] ready with the proposed Canada Corrections Act before the Summer of 1974. As I said, however, this is a question that is receiving and will continue to receive much of our attention and, if progress were to be effected in the development of this legislation at a better pace than anticipated, I would hope that both Cabinet Committee and Parliamentary time could be found.

There has been no change in the status of the two other items concerning my Ministry, which appear on page 10 of the list of non-priority items.

My officials and I would, of course, be glad to provide you with additional information should you so require.

Yours sincerely,

Original Signed by
Original Signé par
Warren Allmand

Warren Allmand,
Solicitor General

RT/hl

141-306

File Classe

c.c. Mr. B.C. Hofley

Ottawa, Ontario
K1A 0P8

June 14, 1973

Mr. R.G. Robertson,
Clerk of the Privy Council,
Privy Council Office,
East Block,
Ottawa.

Dear Mr. Robertson,

In my letter of June 7, 1973 I dealt with the two bills that I have before the House of Commons - the Capital Punishment bill and the bill amending the Parole Act. As I indicated in my letter, it is my opinion that both bills must be passed by Parliament before the Summer adjournment and I propose to raise the matter directly with the House Leader, the Honourable Allan MacEachen.

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that legislation be enacted generally along the lines mentioned in the text that appears on your list under the heading "Remarks". The department had received approval from Cabinet to proceed with the preparation of legislation along these lines, about two years ago, and to discuss these proposals with the provinces. For a number of reasons, these discussions have never taken place. I have asked, however, that our departmental position vis-à-vis this legislation be reviewed in the light of the developments that have taken place in the last two years. In so far as we are concerned, the decisions that were made by Cabinet at the time are still valid and it is my intention to discuss our proposals with my provincial colleagues at the Federal-Provincial Conference that is being proposed for late September or early October. Since the matter has already been before Cabinet and since we do not propose, at least for the time being, any change to the decisions that were made at the time, I would assume that it would be sufficient for your purposes if we were to report to Cabinet on our discussions with the provinces, immediately after they have been completed.

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be ready with the proposed Canada Corrections Act before the Summer of 1974. As I said, however, this is a question that is receiving and will continue to receive much of our attention and, if progress were to be effected in the development of this legislation at a better pace than anticipated, I would hope that both Cabinet Committee and Parliamentary time could be found.

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My officials and I would, of course, be glad to provide you with additional information should you so require.

Yours sincerely,

Original Signed by
Original Signé par
Warren Allmand

Warren Allmand,
Solicitor General

RT/hl

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	May 31, 1973

SUBJECT / OBJET: Capital Punishment

The Minister may be interested in the attached material relating to the debate on second reading of Bill C-2 (capital punishment).

Att.

A. J. MacLeod.

(Sent to Minister for information - May 31/73)

001691

Debate on Second Reading of Bill C-2 (capital punishment)

First Reading - January 11, 1973
Second Reading - May 29, 1973

Indication of position during debate			Vote	
For	Against		For	Against
16	6	Liberals and Independents	84	23
14	38	Progressive Conservatives	25	75
14	--	New Democratic Party	29	2
--	12	Social Credit	--	14
44	56		138	114

Alternative proposals suggested during the debate were these:

Life imprisonment without parole:	Railton (L)
Improve parole system:	Foster (L) Cullen (L) Reid (L) Marceau (L) Gilbert (NDP) Rowland (NDP)
25 years mandatory minimum:	Diefenbaker (C) O'Connor (C) Marchand (L)
Defer Bill C-2 and introduce new bill with clearer issues:	G. Caouette (SC)
Life sentence without parole:	Holmes (C)
Reduce moratorium to 2 years:	Mather (NDP)
Voting "for" on second but against on third reading if any death penalty retained:	Ritchie (C) Lachance (L) Herbert (L) Leblanc (L) Olivier (L) - will abstain on third if death penalty retained

B i l l C-2: Debate during Second Reading (1973)

AGAINST the Bill (regardless of personal conviction on the issue of Death Penalty) /names in brackets: implied indication of voting, without formal declaration/		FOR the Bill		Alternatives
January 26				
Erik Nielsen	C	Warren Allmand	L	
C-A Gauthier	SC	Stu Leggatt	NDP	
Jack Horner	C	Vic Railton	L	Life imprisonment without parole
January 29:				
Eld.Wooliams	C	Peter Reilly	C	
Ross Whitcher	L	Jim Fleming	L	
René Matte	SC	Andr.Brewin	NDP	
(Gordon Towers)	C	Keith Penner	L	
		Maurice Foster	L	Improve parole system
		John Gilbert	NDP	Improve parole -"-
		DavMacDonald	C	
January 30:				
Gaston Clermont	L	Fernand Leblenc	L	
Donald Munro	C	/but will vote against in 3-rd reading if complete abolition not obtained/		
		John Diefenbaker	C	-- 25 yrs mandatory -- refer to Supreme Cou
		Jack Cullen	L	Improve parole syste
		Doug Rowland	NDP	" " "
January 31:		Jacques Olivier	L	
Ian Arrol	C	/but will abstain in 3-rd reading if death sentence retained at all/		
Antonio Thomas	L	John Reid	L	Improve parole syste
(J-M.Boisvert)	SC	Terry O'Connor	C	25 yrs mandatory
Lloyd Crouse	C	Len Marchand	L	-- mandatory 20-25 yr -- improve parole

AGAINST the Bill		F O R the Bill		Alternatives
February 20:				
Raymond Guay	L	(Ed Nelson)	NDP	
Dan MacKenzie	C			
May 14:		H.T.Herbert	L	
		/but will oppose it on 3-rd reading/		
John Reynolds	C	Heath Macquarrie	C	
Gerard Laprise	SC	Norm.Cafik	L	
Reg.Stackhouse	C	Elias Nesdoly	NDP	
		Otto Lang	L	
		Giles Marceau	L	Improve parole system
		Grace McInnis	NDP	
May 15:				
Tom Cossitt	C			
Ovide Laflamme	L	Max Saltzman	NDP	
Elmer MacKay	C			
Eudore Allrd	SC			
Don Blenkarn	C			
May 16:		P.E.Trudeau	L	
Henry Latulippe	SC	Robt Stanfield	C	
Bill Clarke	C	David Lewis	NDP	
Otto Jelinek	C	George Lachance	L	
		/but will vote against on 3-rd reading if any death penalty retained/		
Adrien Lambert	SC			
John Fraser	C			
May 22:				
Paul Dick	C	Cyril Symes	NDP	
Gilles Caouette	SC	. . . . .		-- defer C-2 and introduce new bill with clear issues
Stan Darling	C			
Sean O'Sullivan	C	Flora MacDonald	C	
Roch Lasalle	Ind.	Barry Mather	NDP	-- reduce moratorium to 2 years
(Walter Dinsdale)	C	Douglas Roche	C	
Doug Neil	C	Derek Blackburn	NDP	

AGAINST the Bill		FOR the Bill		Alternatives
May [redacted]:				
John Wise	C	Gordon Ritchie	C	
Léonel Beaudoin	SC	/but will vote against on 3-rd reading if murderers allowed to be paroled/		
Peter Masniuk	C	J.R.Holmes	C	Life sentence without parole
Steve Paproski	C	John Harney	NDP	
Norval Horner	C			
Chas Dionne	SC			
Alex Patterson	C			
Joe Hueglin	C			
A.Alkenbrack	C			
May 24:				
Réal Caouette	SC	Gordon Fairweather	C	
(Paul Yewchuk)	C	Terry Grier	NDP	
Marcel Lambert	C			
Sinclair Stevens	C			
(Gilbert Rondeau)	SC			
W.C.Scott	C			
Jake Epp	C			
(Wm Frank)	C			
May 29:				
Ellwood Madill	C	Joe Clark	C	
J.P. Nowlan	C	Gerald Baldwin	C	
Stan Schumacher	C	Mark Rose	NDP	
(F. Oberle)	C	James McGrath	C	

N.B.: In addition to M.P.'s who have explicitly or impliedly indicated their intention to vote 'for' or 'against' the bill, three MP's took no position or were not able to complete their address:

Duncan Beattie	C
John Rodriguez	NDP
Ken Higson	C

Altogether, 103 speakers took part in the debate.

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ: File Classer ROP

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: May 31, 1973

SUBJECT / OBJET: Capital Punishment

The Minister may be interested in the attached material relating to the debate on second reading of Bill C-2 (capital punishment).

Att.

A. J. MacLeod.

(Sent to Minister for information - May 31/73)

001696

Debate on Second Reading of Bill C-2 (capital punishment)

First Reading - January 11, 1973
Second Reading - May 29, 1973

Indication of position during debate			Vote	
For	Against		For	Against
16	6	Liberals and Independents	84	23
14	38	Progressive Conservatives	25	75
14	--	New Democratic Party	29	2
--	12	Social Credit	--	14
44	56		138	114

Alternative proposals suggested during the debate were these:

Life imprisonment without parole:	Railton (L)
Improve parole system:	Foster (L) Cullen (L) Reid (L) Marceau (L) Gilbert (NDP) Rowland (NDP)
25 years mandatory minimum:	Diefenbaker (C) O'Connor (C) Marchand (L)
Defer Bill C-2 and introduce new bill with clearer issues:	G. Caouette (SC)
Life sentence without parole:	Holmes (C)
Reduce moratorium to 2 years:	Mather (NDP)
Voting "for" on second but against on third reading if any death penalty retained:	Ritchie (C) Lachance (L) Herbert (L) Leblanc (L) Olivier (L) - will abstain on third if death penalty retained

B i l l C-2: Debate during Second Reading (1973)

AGAINST the Bill (regardless of personal conviction on the issue of Death Penalty) /names in brackets: implied indication of voting, without formal declaration/		FOR the Bill		Alternatives
January 26				
Erik Nielsen	C	Warren Allmand	L	
C-A Gauthier	SC	Stu Leggatt	NDP	
Jack Horner	C	Vic Railton	L	Life imprisonment without parole
January 29:				
Eld.Wooliams	C	Peter Reilly	C	
Ross Whitcher	L	Jim Fleming	L	
René Matte	SC	Andr.Brewin	NDP	
(Gordon Towers)	C	Keith Penner	L	
		Maurice Foster	L	Improve parole system
		John Gilbert	NDP	Improve parole -"-
		DavMacDonald	C	
January 30:				
Gaston Clermont	L	Fernand Leblenc	L	/but will vote against in 3-rd reading if complete abolition not obtained/
Donald Munro	C			
		John Diefenbaker	C	-- 25 yrs mandatory -- refer to Supreme Cour
		Jack Cullen	L	Improve parole syste
		Doug Rowland	NDP	" " "
January 31:		Jacques Olivier	L	/but will abstain in 3-rd reading if death sentence retained at all/
Ian Arrol	C			
Antonio Thomas	L	John Reid	L	Improve parole syste
(J-M.Boisvert)	SC	Terry O'Connor	C	25 yrs mandatory
Lloyd Crouse	C	Len Marchand	L	-- mandatory 20-25 yrs -- improve parole

AGAINST the Bill		FOR the Bill		Alternatives
February 20:				
Raymond Guay	L	(Ed Nelson)	NDP	
Dan MacKenzie	C			
May 14:		H.T.Herbert /but will oppose it on 3-rd reading/	L	
John Reynolds	C	Heath Macquarrie	C	
Gerard Laprise	SC	Norm.Cafik	L	
Reg.Stackhouse	C	Elias Nesdoly	NDP	
		Otto Lang	L	
		Giles Marceau	L	Improve parole system
		Grace McInnis	NDP	
May 15:				
Tom Cossitt	C			
Ovide Laflamme	L	Max Saltzman	NDP	
Elmer MacKay	C			
Eudore Allrd	SC			
Don Blenkarn	C			
May 16:		P.E.Trudeau	L	
Henry Latulippe	SC	Robt Stanfield	C	
Bill Clarke	C	David Lewis	NDP	
Otto Jelinek	C	George Lachance /but will vote against on 3-rd reading if any death penalty retained/	L	
Adrien Lambert	SC			
John Fraser	C			
May 22:				
Paul Dick	C	Cyril Symes	NDP	
Gilles Caouette	SC	. . . . .		-- defer C-2 and introduce new bill with clear issues
Stan Darling	C			
Sean O'Sullivan	C	Flora MacDonald	C	
Roch Lasalle	Ind.	Barry Mather	NDP	-- reduce moratorium to 2 years
(Walter Dinsdale)	C	Douglas Roche	C	
Doug Neil	C	Derek Blackburn	NDP	

AGAINST the Bill		FOR the Bill		Alternatives
May 2[illegible]:				
John Wise	C	Gordon Ritchie	C	
Léonel Beaudoin	SC	/but will vote against on 3-rd reading if murderers allowed to be paroled/		
Peter Masniuk	C	J.R.Holmes	C	Life sentence without parole
Steve Paproski	C	John Harney	NDP	
Norval Horner	C			
Chas Dionne	SC			
Alex Patterson	C			
Joe Hueglin	C			
A.Alkenbrack	C			
May 24:				
Réal Caouette	SC	Gordon Fairweather	C	
(Paul Yewchuk)	C	Terry Grier	NDP	
Marcel Lambert	C			
Sinclair Stevens	C			
(Gilbert Rondeau)	SC			
W.C.Scott	C			
Jake Epp	C			
(Wm Frank)	C			
May 29:				
Ellwood Madill	C	Joe Clark	C	
J.P. Nowlan	C	Gerald Baldwin	C	
Stan Schumacher	C	Mark Rose	NDP	
(F. Oberle)	C	James McGrath	C	

N.B.: In addition to M.P.'s who have explicitely or impliedly indicated their intention to vote 'for' or 'against' the bill, three MP's took no position or were not able to complete their address:

Duncan Beattie	C
John Rodriguez	NDP
Ken Higson	C

Altogether, 103 speakers took part in the debate.

s.23

1 41 - 206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: **DEPUTY SOLICITOR GENERAL**

FROM / DE: **DEPARTMENTAL COUNSEL**

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: May 30, 1973

SUBJECT / OBJET: **Grants of Parole - Lifers**

[redacted]

I much regret any confusion that I may have caused.

J.H. Hollies,
Departmental Counsel

JHH/mab

Copy re: 700-3

cc: Mr. T.G. Street,
Chairman, National Parole Board

001701

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

s.23

TO / A: DEPUTY SOLICITOR GENERAL

FROM / DE: DEPARTMENTAL COUNSEL

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/REFERENCE:

YOUR FILE - V/REFERENCE:

DATE: May 30, 1973

SUBJECT / OBJET: Grants of Parole - Lifers

[redacted]

I much regret any confusion that I may have caused.

JHH/mab

J.H. Hollies,
Departmental Counsel

Copy re: 700-3

cc: Mr. T.G. Street,
Chairman, National Parole Board

001702

DEPUTY SOLICITOR GENERAL | SOLLICITEUR GÉNÉRAL ADJOINT

CANADA

Not sent

CONFIDENTIAL

Ottawa, Ontario
K1A 0P8

May 25, 1973

Mr. D.S. Thorson,
Associate Deputy Minister,
Department of Justice,
Justice Building,
Ottawa, Ontario.

Dear Don,

Attached is a copy of a letter that my Minister has just sent to your Minister re possible amendments to Bill C-2 on Capital Punishment, together with the draft Memorandum to Cabinet that was appended to it, for your information.

Sincerely yours,

Roger Tassé

Enc. 2

Memo - June 8
Sent to Mr. Robertson
on June 14

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: May 25, 1973

SUBJECT / OBJET: Draft Memorandum to Cabinet on Capital Punishment - Bill C-2

1. Our draft Memorandum to Cabinet on Capital Punishment, Bill C-2, has been revised to take into account the views expressed by the Minister of Justice in his letter to you of May 9, copy of which is attached.

2. The attached revised Memorandum to Cabinet recommends that there be only one type of murder, as suggested by Mr. Lang. The definition of "murder" that would apply would be the one in existence prior to the amendments of 1961 which provided for the first time for capital and non-capital murder. It is not felt, however, that it is possible to accept Mr. Lang's suggestion that the definition of murder incorporate most of the text for aggravated murder. We either have one type of murder which is all-inclusive, or have two types. It is our view that there should be one type of murder, using the pre-1961 definition and leaving it to the Judge to increase the stringency of the conditions under which the release of persons convicted of murder could be effected, where appropriate.

3. The Memorandum to Cabinet does not recommend, contrary to what was originally contemplated, that the Governor in Council have the power to provide for earlier parole on a case-by-case basis. It is our view that this kind of provision would not receive the support of the House or the public. The document does, however, recommend that the Governor in Council's approval for parole be done away with.

4. I attach a letter for your signature to the Minister of Justice, asking for his concurrence or otherwise on the revised Memorandum to Cabinet.

RT/hl

Roger Tassé

Enc. 2

001704

By Hand

141-206

Ottawa, Ontario
K1A 0P8

24 May 1973

Dear Mr. Desmarais,

Re: Parliamentary Enquiry (Murder of Police Officers and Prison Guards)
Question by Senator the Hon. Lionel Choquette - Senate Debates, 22 May 1973, Page 618.

Reference is made to our conversation of yesterday afternoon on the above noted subject.

The number of persons found guilty of capital murder since "An Act to amend the Criminal Code" (1967-68 S.C. Chapter 15) was proclaimed in force on December 29, 1967, was six. All of these cases involved the murder of police officers or prison guards. The sentence of four was commuted, as follows:

Date of conviction	Date sentence commuted
11 April 1968	3 July 1969
20 January 1970	4 February 1971
12 March 1970	23 December 1970
15 October 1970	24 February 1972

The two other cases, in which the trial courts registered convictions and passed sentences of death, are still before the Courts. One of these cases is before the Quebec Court of Appeal and the other will be before the Supreme Court of Canada, if an extention of time is granted.

Yours truly,

J.E.A. Mosley
Administrative Assistant

JEAM/5-8147/jw:er

File Hollies
Classer 24 May

Mr. J. Desmarais,
Executive Assistant to the Leader of
the Government in the Senate,
Room 279-S, Centre Block
Parliament Buildings
Ottawa, Ontario K1A 0A6

CC: D.S.G.
F.A. Hollies ✓

Copy to: 117-2

001705

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER,
CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	May 24, 1973

SUBJECT / OBJET: Memorandum to Cabinet - Capital Punishment

Pursuant to your note of May 23 last, I attach a revision of the proposed memorandum to Cabinet on capital punishment - Bill C-2.

The changes from the draft of March 26 last and the revised pages 3, 4 and 5 that I sent to you on May 11 last are these:

(a) in paragraph 3 of the March 26 draft these sentences have been deleted:

"Some thirty-six members of Parliament have spoken in the debate. The main recommendations that they have made are set out very briefly in Appendix 'A'."

in the next sentence Appendix "B" has been changed to Appendix "A".

I propose to have available for the Minister next week a summary of the positions taken by the several members who have made new proposals.

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"A" - the law relating to parole and temporary absence of inmates serving sentences upon conviction for murder; and

"B" - the definition of murder as it existed in the Code prior to the amendments of 1961 that provided, for the first time, for capital and non-capital murder.

A. J. MacLeod.

A. J. MacLeod.

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: I THE DEPUTY SOLICITOR GENERAL
II Solicitor General
your request
"RJ"

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY — May 24/73

SECURITY CLASSIFICATION - DE SÉCURITÉ: File Rdp Classer

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: May 24, 1973

SUBJECT / OBJET: Capital punishment - any mistakes?

Reference the Minister's note hereunder of May 22, I can say that I have examined all of the files since Confederation where sentences of death have been imposed by the courts and in no case where the execution has been carried out has there been evidence brought forward, after the execution, to indicate that the person executed had not done the act that resulted in the victim's death.

Over the years Mr. Diefenbaker has regularly referred, in vague terms, to a case that he knows of where the wrong man was convicted and executed. He has never identified the case by name or given the Department of Justice or this department sufficient clues to enable the case to be identified. This was so even when he was Prime Minister.

In sum, it can be said that neither department has, since Confederation, received representations from a responsible source that would identify a Canadian case in which a person executed did not do the act that resulted in the victim's death or was not, under the law, a party to the act that caused the victim's death.

A. J. MacLeod.

AJM*EGM

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Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	May 24, 1973

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

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"B" - the definition of murder as it existed in the Code prior to the amendments of 1961 that provided, for the first time, for capital and non-capital murder.

A. J. MacLeod.

AJM*EGM

CONFIDENTIAL

May 25, 1973

MEMORANDUM TO THE CABINET

Re: Capital Punishment - Bill C-2

PROBLEM

1. On January 25, 1973, the undersigned introduced Bill C-2, an Act to amend the Criminal Code with respect to persons convicted of murder. That bill would extend for five years the 1967 law on capital punishment which expired on December 29, 1972, and which limited the death penalty to the murder of a police or prison officer.

2. Bill C-2 is comparable to the 1967 law except that it substitutes the expressions "murder punishable by death" and "murder punishable by life imprisonment" for the expressions "capital" and "non-capital" murders. This change was made for purposes of clarity.

3. Since the introduction of Bill C-2, concern has been expressed in Parliament and in the press about the increase in recent years in the number of murders. This seems to reflect a feeling that the 1967-72 law was not a sufficient deterrent to murderers. A related concern is the belief, even on the part of some abolitionists, that the rules and practices for the release of convicted murderers on temporary absence or parole are too lax. Appendix "A" summarizes the law concerning the release on parole or temporary absence of inmates convicted of murders.

4. Given present indications as to the manner in which Members of Parliament will vote, Bill C-2 might well be defeated, which would leave the government with the difficult task of administering the pre-1967 law.

OBJECTIVE

5. This memorandum seeks approval for the preparation of amendments to Bill C-2 that would provide for the total abolition of capital punishment and the substitution therefor of life imprisonment, subject to statutory conditions regarding the release of murderers on temporary absence or parole.

FACTORS

6. A majority of Canadians seem to think that capital punishment is necessary as a deterrent. It is probably correct to assume that the element of deterrence is considered by Canadians to be necessary to protect the public against persons who have already been convicted of murder and persons who, in the absence of appropriate deterrence, are potential murderers. In this context, the question to be resolved appears to be this: In relation to life sentences for murder, what conditions are reasonably necessary, in terms of deterrence, for the protection of the public while still leaving the offender with a reasonable hope of ultimately returning to society as a useful citizen?

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7. Amendments to the criminal law calculated to achieve the objective set out in paragraph 5, having regard to the current state of public opinion, would involve the application of some, if not all, of the following considerations:

(a) The death penalty is not the most effective method of dealing with persons who are convicted of murder:

The advantage of the death penalty is that it punishes the offender and has deterrent value; how great a deterrent it is forms the basis of much of the current argument over capital punishment; it does not rehabilitate.

The argument for life imprisonment is that, depending upon the length of time to be spent in custody, it does punish; it has deterrent value, to a greater or lesser extent; it holds some promise of rehabilitating the offender.

(b) The conditions of the custody of persons convicted of the most serious types of murder should be more stringent than they are in less reprehensible cases:

The advantage would be that the law would continue to recognize, in terms of punishment and deterrence, the distinctions that have previously existed between capital and non-capital murder.

(c) The law should require a mandatory minimum sentence to be served in custody by an offender who is sentenced to life imprisonment for murder:

The argument for such sentences is that, in the eyes of the public, they have both punitive and deterrent value and are probably necessary if imprisonment is to be accepted as an alternative to the death sentence.

The argument against such sentences is that the longer the period of time (e.g. 20 years) that an offender is in custody, the less likely, as a rule, is the prison experience to be rehabilitative. A period of mandatory custody that leaves little or no hope may tend to lead the imprisoned man to one or more of the following courses: suicide, escape at any cost, including the lives of prison officers, trouble-making in the institution by way of fomenting disturbances to show his hatred of society, or withdrawal into a shell until he becomes, in effect, a vegetable. His marriage, if any, is not likely to last. Where, by reason of a long minimum sentence in custody, all reasonable hope of return to a useful life in the community is destroyed, the result is more likely to be torture than punishment.

..3

(d) The trial judge should have a function in fixing the minimum amount of time to be served in custody by an offender who is sentenced to life imprisonment for murder:

The advantage is that the judge, at the time of sentence, is aware of local public sentiment (in terms of punishment and deterrence), the circumstances of the offence, and some of the characteristics of the offender, presumably but not necessarily including his rehabilitative needs.

Some of the disadvantages are that, because in Canada there are several hundreds of judges who preside over murder trials, no two cases would be dealt with alike, and there could soon be a cry for "equal justice".

In addition, if this is a logical role for a judge in a murder trial, there would seem to be no reason for not extending that role to life sentences arising out of armed robbery, rape, kidnapping, hijacking and the like, where life sentences are not mandatory but are sometimes imposed.

(e) Temporary absence or day parole without escort for an offender sentenced to life imprisonment for murder should be restricted during the minimum period that he is required to serve in custody:

The advantage of restrictions is that they would tend to satisfy the public that the punishment for murder is appropriately punitive and deterrent and that, for an extensive period of time, the public will be protected, as far as it is humanly possible to do so, from the offender.

The disadvantage of such a condition is that, for an extensive period of time, many rehabilitative programs involving the offender in the community could not be carried out.

(f) In the most serious and reprehensible cases of murder, parole should be granted after the mandatory minimum period of custody, only with the approval of two-thirds of the members of the Parole Board:

The advantage of not requiring approval of the full Board is that one or two members who might wish to dissent would not, by disagreeing, have to sacrifice their principles or, by dissenting, have to endure the hostility or disdain of the remaining members.

The disadvantage of requiring only two-thirds is presumably that the public would be better satisfied that it is being protected if unanimous approval were required. Such a requirement would also add to the punitive and deterrent value of the life sentence for murder.

..4

(g) The Governor in Council should perhaps have authority under the law to reduce the mandatory minimum term of custody to a lesser term of years:

The advantage of making it possible for the Governor in Council to reduce the minimum period of custody is that it would enable the government, in proper cases involving the need for clemency, to alleviate the harshness of the law or the judge's judgment, having regard to all the circumstances of the case.

The disadvantage is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

COURSES OPEN TO THE GOVERNMENT

8. Among the courses open to the government would seem to be the following:

A. Let Bill C-2 continue, without government amendment, to decision by the House.

The danger of this is that, given the present mood of the House of Commons, the Bill might well be defeated, which would leave the government with the difficult task of having to administer, without amendment, the pre-1967 law.

B. The undersigned proposes that Bill C-2 be amended to give effect to most of the factors set out in paragraph 7 above, in a manner that is likely to be supported by a majority of the House, as follows:

(a) there would be a total abolition of capital punishment for an indefinite period;

(b) "murder" would be defined as it was prior to 1961 (see Appendix "B") and there would be no distinction between "capital" and "non-capital" murder, such as has existed since 1961;

(c) the sentence for murder would be a life sentence;

(d) in the case of "murder" the following conditions would apply:

(i) the minimum period of custody set out in the Criminal Code would be ten years, but the trial judge would have authority, at the time of sentencing, to impose a further minimum period of custody of all or any part of an additional ten years;

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(ii) no temporary absence or day parole, without escort, would be permitted until three years from the expiration of the minimum period, as fixed by the statute or imposed by the trial judge, as the case may be;

(iii) no full parole would be authorized during the minimum period of custody, as fixed by the statute or imposed by the trial judge, and thereafter only if two-thirds of the members of the Parole Board agreed; and

(e) an extension of the minimum period of custody could be appealed to the court of appeal.

9. These conditions are designed to strengthen the screening process for the release from custody of convicted murderers serving life sentences while jeopardizing, as little as possible, the rehabilitation programs of federal correctional services.

10. To accept the proposals described in paragraph "B" above raises questions as to the rules that should govern the release on temporary absence or parole of persons who have already been convicted of murders. The new rules would be more restrictive than current rules in terms of years an inmate would be required to stay in custody and the granting of temporary absences and parole. It is suggested that these new rules should not have retroactive effect, and the present law should continue to apply to cases that have arisen or will arise prior to the coming into force of the proposed legislation.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

11. There would seem to be no obligation on the government to discuss the merits of any such proposed legislation with the provincial governments. There were no formal discussions with the provinces prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

12. The undersigned has consulted with the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

13. In the opinion of the undersigned, the proposals for amending Bill C-2 outlined above are likely to be preferred by a majority of Canadians to the scheme contained in Bill C-2.

CAUCUS CONSULTATION

14. There should be Caucus consultation after Cabinet has reached a tentative decision on the issues involved.

..6

LIBERAL FEDERATION

15. Not applicable.

RECOMMENDATION

16. The undersigned recommends that Cabinet should instruct the Department of Justice to prepare whatever amendments to Bill C-2 are necessary to implement paragraph 8B of this submission, and that the undersigned be authorized to move these amendments to Bill C-2 at an appropriate time when the Bill is under study by the Justice and Legal Affairs Committee.

Respectfully submitted,

_____
Solicitor General

I concur

_____
Minister of Justice

APPENDIX "A"

Law Relating to Parole and Temporary Absence of Inmates Serving Sentences Upon Conviction for Murder

Regulations under the Parole Act

Regulation 2(3) provides that a person who is serving a sentence of imprisonment to which a sentence of death has been commuted either before or after the coming into force of this subsection (i.e., capital murder) or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment after the coming into force of this subsection (i.e., non-capital murder) shall serve the entire term of the sentence of imprisonment unless, upon the recommendation of the Board, the Governor in Council otherwise directs.

Regulation 2(4) provides that the Board shall not recommend a parole, in a case coming within subsection (3), until at least ten years of the term of imprisonment minus

(a) in the case of a sentence of imprisonment for life (i.e., non-capital murder), the time spent in custody from the day on which the inmate was arrested and taken into custody in respect of the offence for which he was sentenced to imprisonment for life to the day the sentence was imposed, have been served; or

(b) in the case of a sentence of death which has been commuted (i.e., capital murder), the time spent in custody from the day on which the inmate was arrested and taken into custody in respect of the offence for which he was sentenced to death to the day the sentence was commuted, have been served.

Temporary Absence

Section 26 of the Penitentiary Act provides, in relation to all inmates of penitentiaries, including murderers serving life sentences, as follows:

" 26. Where, in the opinion of the Commissioner or the officer in charge of a penitentiary, it is necessary or desirable that an inmate should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate, the absence may be authorized from time to time

(a) by the Commissioner, for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the inmate, or

(b) by the officer in charge, for a period not exceeding fifteen days for medical reasons and for a period not exceeding three days for humanitarian reasons or to assist in the rehabilitation of the inmate."

212. Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or any offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

(a) he means to cause bodily harm for the purpose of

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence,

and the death ensues from the bodily harm;

(b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;

(c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or

(d) he uses a weapon or has it upon his person

(i) during or at the time he commits or attempts to commit the offence, or

(ii) during or at the time of his flight after committing or attempting to commit the offence,

and the death ensues as a consequence.

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

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The disadvantage is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

COURSES OPEN TO THE GOVERNMENT

8. Among the courses open to the government would seem to be the following:

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The danger of this is that, given the present mood of the House of Commons, the Bill might well be defeated, which would leave the government with the difficult task of having to administer, without amendment, the pre-1967 law.

B. The undersigned proposes that Bill C-2 be amended to give effect to most of the factors set out in paragraph 7 above, in a manner that is likely to be supported by a majority of the House, as follows:

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11. There would seem to be no obligation on the government to discuss the merits of any such proposed legislation with the provincial governments. There were no formal discussions with the provinces prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

12. The undersigned has consulted with the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

13. In the opinion of the undersigned, the proposals for amending Bill C-2 outlined above are likely to be preferred by a majority of Canadians to the scheme contained in Bill C-2.

CAUCUS CONSULTATION

14. There should be Caucus consultation after Cabinet has reached a tentative decision on the issues involved.

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LIBERAL FEDERATION

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RECOMMENDATION

16. The undersigned recommends that Cabinet should instruct the Department of Justice to prepare whatever amendments to Bill C-2 are necessary to implement paragraph 8B of this submission, and that the undersigned be authorized to move these amendments to Bill C-2 at an appropriate time when the Bill is under study by the Justice and Legal Affairs Committee.

Respectfully submitted,

_____
Solicitor General

I concur

_____
Minister of Justice

APPENDIX "A"

Law Relating to Parole and Temporary Absence of Inmates Serving Sentences Upon Conviction for Murder

Regulations under the Parole Act

Regulation 2(3) provides that a person who is serving a sentence of imprisonment to which a sentence of death has been commuted either before or after the coming into force of this subsection (i.e., capital murder) or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment after the coming into force of this subsection (i.e., non-capital murder) shall serve the entire term of the sentence of imprisonment unless, upon the recommendation of the Board, the Governor in Council otherwise directs.

Regulation 2(4) provides that the Board shall not recommend a parole, in a case coming within subsection (3), until at least ten years of the term of imprisonment minus

(a) in the case of a sentence of imprisonment for life (i.e., non-capital murder), the time spent in custody from the day on which the inmate was arrested and taken into custody in respect of the offence for which he was sentenced to imprisonment for life to the day the sentence was imposed, have been served; or

(b) in the case of a sentence of death which has been commuted (i.e., capital murder), the time spent in custody from the day on which the inmate was arrested and taken into custody in respect of the offence for which he was sentenced to death to the day the sentence was commuted, have been served.

Temporary Absence

Section 26 of the Penitentiary Act provides, in relation to all inmates of penitentiaries, including murderers serving life sentences, as follows:

> " 26. Where, in the opinion of the Commissioner or the officer in charge of a penitentiary, it is necessary or desirable that an inmate should be absent, with or without escort, for medical or humanitarian reasons or to assist in the rehabilitation of the inmate, the absence may be authorized from time to time
>
> (a) by the Commissioner, for an unlimited period for medical reasons and for a period not exceeding fifteen days for humanitarian reasons or to assist in the rehabilitation of the inmate, or
>
> (b) by the officer in charge, for a period not exceeding fifteen days for medical reasons and for a period not exceeding three days for humanitarian reasons or to assist in the rehabilitation of the inmate."

212. Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or any offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

(a) he means to cause bodily harm for the purpose of

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence,

and the death ensues from the bodily harm;

(b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;

(c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or

(d) he uses a weapon or has it upon his person

(i) during or at the time he commits or attempts to commit the offence, or

(ii) during or at the time of his flight after committing or attempting to commit the offence,

and the death ensues as a consequence.

CANADA

WITH THE COMPLIMENTS
OF THE
SECRETARY OF STATE
FOR
EXTERNAL AFFAIRS

AVEC LES HOMMAGES
DU
SECRÉTAIRE D'ÉTAT
AUX
AFFAIRES EXTÉRIEURES

May 22/73

To: Mr. J.H.Hollies, QC
Ministry Council
Ministry of Solicitor General

From: Mr. H. Mayne
United Nations Economic and
Social Affairs Division

For your information: Please note in particular paragraph 2.

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EXT. 914/BIL. (REV. 9/70)
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ACTION COPY

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INFO TT GENEV DE PARIS

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---ECOSOC 54

IN PLENARY MAY16 COUNCIL DISPOSED OF ITEMS 13 17 3 4 20 AND 21 ON ITS AGENDA APPROVING REPORTS ON ALL SUBMITTED BY RESPECTIVE SESSIONAL CTTEES.

2. ITEM 13 CAPITAL PUNISHMENT:COUNCIL ADOPTED RESLN RECOMMENDED BY SOCIAL CTTEE BY VOTE OF 13-0-12.CHILE CHANGED ITS VOTE FROM ABSTENTION IN CTTEE TO YES IN PLENARY.

3. ITEM 17 SOCIAL DEVELOPMENT:COUNCIL ADOPTED WITHOUT OBJECTION ALL FIVE DECISIONS RECOMMENDED BY SOCIAL CTTEE IN ITS REPORT E/5328. IT ADOPTED ALSO RESLN ON NATL EXPERIENCE IN ACHIEVING FAR-REACHING SOCIAL AND ECONOMIC CHANGES FOR THE PURPOSE OF SOCIAL PROGRESS BY VOTE OF 24-0-1(USA).BRAZIL CHANGED ITS VOTE FROM ABSTENTION IN CTTEE TO YES IN PLENARY.RESLN ON UNIFIED APPROACH TO DEVELOPMENT ANALYSIS AND PLANNING WAS ADOPTED 25-0-1(CHINA)THAT ON REVIEW AND APPRAISAL OF THE IMPLEMENTATION OF THE IDS FOR THE SECOND UN DEVELOPMENT DECADE BY CONSENSUS AND THAT ON MIGRANT WORKERS BY VOTE OF 27-0-0.RESLN ON CONVENING OF A UN CONFERENCE FOR AN INNATL CONVENTION ON ADOPTION LAW WAS ADOPTED 19-0-8(SOCIALISTS ALGERIA

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LEBANON MALAYSIA AND CHINA)AND THAT ON THE AGED AND SOCIAL SECURITY BY CONSENSUS.LAST RESLN ON NEEDS AND ASPIRATIONS OF YOUTH WAS ADOPTED 22-0-4(SOCIALISTS).CHINA DID NOT/NOT PARTICIPATE IN VOTE.

4.ITEM 3 SPECIAL MEASURES IN FAVOUR OF THE LEAST DEVELOPED AMONG THE DEVELOPING COUNTRIES:COUNCIL APPROVED BY CONSENSUS TWO RESLNS RECOMMENDED BY ECONOMIC CTTEE IN ITS REPORT E.5327.

5.ITEM 4 SPECIAL MEASURES RELATED TO THE PARTICULAR NEEDS OF THE LANDLOCKED DEVELOPING COUNTRIES:COUNCIL ADOPTED RESLN RECOMMENDED BY ECONOMIC CTTEE(E.5326)BY VOTE OF 21(USA)-0-6(WEOS).

6.ITEM 20 STUDY ON REGIONAL STRUCTURES:FIRST DRAFT RESLN RECOMMENDED BY COORDINATION CTTEE(E.5338)WS ADOPTED BY COUNCIL BY CONSENSUS.AMENDMENT INTRODUCED INTO SECOND RESLN BY BRAZIL IN CTEE WAS CALLED INTO QUESTION AND AFTER RELATIVELY BRIEF DEBATE OPPARA ONE OF RESLN WAS AMENDED TO DELETE WORDS QUOTE AND SUPERVISION UNQUOTE FROM ITS FIFTH LINE AND TO SUBSTITUTE QUOTE INTERGOVTL UNQUOTE FOR QUOTE LEGISLATIVE UNQUOTE.RESLN WAS THEN ADOPTED BY CONSENSUS.REP OF WHO INTERVENED TO REITERATE POINT HE HAD MADE IN CTTEE THAT HIS ORGANIZATIONS REGIONAL SUBSIDIARIES COULD NOT/NOT BECAUSE OF CONSTITUTIONAL REALITIES BE SUBORDINATED TO REGIONAL ECONOMIC COMMISSIONS BY ECOSOC RESLN.

7.ITEM 21 TOURISM:COUNCIL ADOPTED WITHOUT VOTE RESLN AND DECISION ON CHINESE REP IN IUOTO RECOMMENDED BY COORDINATION CTTEE(E.5327). CHINA EXPRESSED ITS SUPPORT FOR DECISION AND BRAZIL SAID THAT HAD

THERE BEEN VOTE ON IT HE WOULD HAVE ABSTAINED.

8.AT PRESIDENTS REQUEST COUNCIL ADDRESSED ITSELF TO VOTE BY SECGEN ON INCREASE IN SEATING CAPACITY OF ECOSOC CHAMBER(E.5308)AND EXPRESSED GEN DISSATISFACTION WITH RECONSTRUCTION PLAN PROPOSED BY SECRETARIAT.VIEW RPTD BY MOST SPEAKERS WAS THAT FINANCIAL ONSIDERATIONS HAD BEEN OVEREMPHASIZED AND THAT TOO LITTLE ATTN HAD BEEN GIVEN TO IMPORTANCE AND PRESTIGE OF COUNCIL.PARTICULAR SORE POINTS WERE PROVISION OF ONLY ONE ADVISERS SEAT FOR SOME DELS AND LACK OF PROVISION FOR VOTING MACHINE.RESULT OF DISCUSSION WAS THAT PRESIDENT AND AD HOC GROUP WILL HAVE DISCUSSION WITH SECGEN AND HIS ADVISERS TO MAKE THEM AWARE OF COUNCILS FUNCTIONAL REQUIREMENTS AND TO ASK THEM TO COME UP WITH ALTERNATIVE SCHEME.

9.COUNCIL ALSO GAVE PRELIMINARY CONSIDERATION TO AGENDA ITEM 30 PROVISIONAL AGENDA FOR AND DURATION OF FIFTY-FIFTH SESSION.USUAL COMPLAINTS ABOUT LENGTH OF AGENDA AND DESIRABILITY OF CONCENTRATING ON FEW ITEMS WERE EXPRESSED AS WERE ALSO USUAL REQUESTS FOR ADDITIONAL ITEMS.BEHIND ALL THIS WAS PRESIDENTS RECOMMENDATION THAT SESSION BE EXTENDED FROM AUG3 TO AUG10 AND HE WAS SUPPORTED WITH ENTHUSIASM BY AMB SANTA CRUZ OF CHILE.OPPOSITION WAS EXPRESSED BY REPS OF FRANCE SPAIN AND MALAYSIA BUT EXTENSION IDEA SEEMS ALMOST CERTAIN TO PREVAIL.

10.IN COURSE OF THIS DISCUSSION SANTA CRUZ MADE FORMAL REQUEST THAT EXECTUTIVE DIRECTOR OF GATT BE INVITED TO BE PRESENT FOR AND TO

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TO PARTICIPATE IN ECOSOC 55S GEN DEBATE WHICH HE SAID WAS OF FUNDAMENTAL IMPORTANCE AND DESERVED ATTN OF ALL MAJOR FIGURES REPRESENTING ENTIRE GAMUT OF WORLD ECONOMIC AND SOCIAL SITUATION.

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Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

s.23

TO / À: DEPUTY SOLICITOR GENERAL

FROM / DE: J.H. HOLLIES
DEPARTMENTAL COUNSEL

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	May 15, 1973

SUBJECT / OBJET: Capital Punishment

[redacted]

JHH/lcf

J.H. HOLLIES

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Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

DM SM
SOL GEN

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: May 14, 1973

SUBJECT / OBJET: Capital Murder in Ohio

Jim MacDonald
for your information
JS
May 16/73.

File / Classer

Some weeks ago the Minister's attention was drawn to a newspaper article on the subject of changes in the law involving capital punishment in the State of Ohio in December, 1972.

Under this legislation a person commits murder in the first degree if he "purposely, and with prior calculation and design" causes the death of another, or "purposely (causes) the death of another while violating or attempting to violate, or while fleeing immediately after violating or attempting to violate" certain other sections of the Criminal Code, such as kidnapping, rape, arson, robbery, burglary or escape.

A person who commits murder in the first degree "shall suffer death or be imprisoned for life."

Imposition of the death penalty for murder in the first degree is precluded unless the indictment charging the offence specifies one or more of the following aggravating circumstances:

(1) Assassination of the U.S. President, the State Governor, a member of Congress or the State General Assembly, a Judge of the State or a federal Judge, or a candidate for any of those offices.

(2) The offence was committed with the purpose of aiding or abetting organized criminal activity.

(3) The offence was committed for hire, or for the purpose of personal gain or aggrandizement.

(4) The offence was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offence committed by the offender.

(5) The offence was committed while the offender was a prisoner in a penal institution.

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(6) The offender has previously been convicted of purposely killing or attempting to kill another, or the offence at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons.

(7) The offender killed the victim from ambush.

(8) The victim of the offence was a law enforcement officer whom the offender knew to be such, and either the victim was engaged in his duties at the time of the offence or it was the offender's specific purpose to kill a law enforcement officer.

(9) The victim was substantially defenceless at the time of the offence by reason of being completely in the offender's power, or by reason of youthful immaturity, the infirmities of age, or physical or mental impairment resulting from defect, disease or injury.

When an indictment contains one or more of the foregoing specifications the verdict is required to state whether the accused is found guilty or not guilty of the principal charge (murder in the first degree) and, if guilty thereof, whether the offender is guilty or not guilty of each specification. No reference before the jury is permitted concerning the consequence of a guilty or not guilty verdict on any charge or specification.

If the indictment contains no specification, or there is a not guilty verdict in relation to all specifications, the Court is required to impose a sentence of life imprisonment.

If there is a verdict of guilty of both the charge and one or more of the specifications the penalty shall be determined

(a) by the panel of three judges that tried the offender upon his waiver of the right to trial by jury; or

(b) by a panel of three judges appointed for the purpose, one of whom may be the trial judge, if the offender was tried by jury. The panel is to be appointed by the presiding judge of the Common Pleas Court of the County or, if there is no presiding judge, by the Chief Justice of the Supreme Court.

When death may be imposed as a penalty for murder in the first degree the Court shall require a pre-sentence investigation and a psychiatric examination to be made, and other reports called for by the Criminal Code.

..3

Where the Court unanimously finds that none of the mitigating circumstances referred to hereafter is established by a preponderance of the evidence, it shall impose a sentence of death on the offender.

Regardless of whether one or more of the aggravating circumstances referred to above is specified in the indictment and proved beyond a reasonable doubt, the death penalty for murder in the first degree is precluded when, considering the nature and circumstances of the offence, and the history, character and condition of the offender, one or more of the following is established by a preponderance of the evidence:

(a) the victim of the offence induced or facilitated it;

(b) it is unlikely that the offence would have been committed but for the fact that the offender was under duress, coercion or strong provocation;

(c) the offence was primarily the product of the offender's psychosis or mental deficiency, though such a condition is insufficient to establish the defence of insanity.

The Code also contains provisions relating to voluntary manslaughter and involuntary manslaughter.

A. J. MacLeod.

THE DEPUTY SOLICITOR GENERAL

SPECIAL ADVISER,
CORRECTIONAL POLICY

May 14, 1973

Capital Murder in Ohio

Some weeks ago the Minister's attention was drawn to a newspaper article on the subject of changes in the law involving capital punishment in the State of Ohio in December, 1972.

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(3) The offence was committed for hire, or for the purpose of personal gain or aggrandizement.

(4) The offence was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offence committed by the offender.

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..2

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If there is a verdict of guilty of both the charge and one or more of the specifications the penalty shall be determined

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(b) by a panel of three judges appointed for the purpose, one of whom may be the trial judge, if the offender was tried by jury. The panel is to be appointed by the presiding judge of the Common Pleas Court of the County or, if there is no presiding judge, by the Chief Justice of the Supreme Court.

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(c) the offence was primarily the product of the offender's psychosis or mental deficiency, though such a condition is insufficient to establish the defence of insanity.

The Code also contains provisions relating to voluntary manslaughter and involuntary manslaughter.

A. J. MacLeod.

AJM:bgm

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE – N/RÉFÉRENCE
YOUR FILE – V/RÉFÉRENCE
DATE: May 14, 1973

SUBJECT / OBJET: Capital Murder in Ohio

Some weeks ago the Minister's attention was drawn to a newspaper article on the subject of changes in the law involving capital punishment in the State of Ohio in December, 1972.

Under this legislation a person commits murder in the first degree if he "purposely, and with prior calculation and design" causes the death of another, or "purposely (causes) the death of another while violating or attempting to violate, or while fleeing immediately after violating or attempting to violate" certain other sections of the Criminal Code, such as kidnapping, rape, arson, robbery, burglary or escape.

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Imposition of the death penalty for murder in the first degree is precluded unless the indictment charging the offence specifies one or more of the following aggravating circumstances:

(1) Assassination of the U.S. President, the State Governor, a member of Congress or the State General Assembly, a Judge of the State or a federal Judge, or a candidate for any of those offices.

(2) The offence was committed with the purpose of aiding or abetting organized criminal activity.

(3) The offence was committed for hire, or for the purpose of personal gain or aggrandizement.

(4) The offence was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offence committed by the offender.

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..2

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(7) The offender killed the victim from ambush.

(8) The victim of the offence was a law enforcement officer whom the offender knew to be such, and either the victim was engaged in his duties at the time of the offence or it was the offender's specific purpose to kill a law enforcement officer.

(9) The victim was substantially defenceless at the time of the offence by reason of being completely in the offender's power, or by reason of youthful immaturity, the infirmities of age, or physical or mental impairment resulting from defect, disease or injury.

When an indictment contains one or more of the foregoing specifications the verdict is required to state whether the accused is found guilty or not guilty of the principal charge (murder in the first degree) and, if guilty thereof, whether the offender is guilty or not guilty of each specification. No reference before the jury is permitted concerning the consequence of a guilty or not guilty verdict on any charge or specification.

If the indictment contains no specification, or there is a not guilty verdict in relation to all specifications, the Court is required to impose a sentence of life imprisonment.

If there is a verdict of guilty of both the charge and one or more of the specifications the penalty shall be determined

(a) by the panel of three judges that tried the offender upon his waiver of the right to trial by jury; or

(b) by a panel of three judges appointed for the purpose, one of whom may be the trial judge, if the offender was tried by jury. The panel is to be appointed by the presiding judge of the Common Pleas Court of the County or, if there is no presiding judge, by the Chief Justice of the Supreme Court.

When death may be imposed as a penalty for murder in the first degree the Court shall require a pre-sentence investigation and a psychiatric examination to be made, and other reports called for by the Criminal Code.

..3

Where the Court unanimously finds that none of the mitigating circumstances referred to hereafter is established by a preponderance of the evidence, it shall impose a sentence of death on the offender.

Regardless of whether one or more of the aggravating circumstances referred to above is specified in the indictment and proved beyond a reasonable doubt, the death penalty for murder in the first degree is precluded when, considering the nature and circumstances of the offence, and the history, character and condition of the offender, one or more of the following is established by a preponderance of the evidence:

(a) the victim of the offence induced or facilitated it;

(b) it is unlikely that the offence would have been committed but for the fact that the offender was under duress, coercion or strong provocation;

(c) the offence was primarily the product of the offender's psychosis or mental deficiency, though such a condition is insufficient to establish the defence of insanity.

The Code also contains provisions relating to voluntary manslaughter and involuntary manslaughter.

A. J. MacLeod.

AJM:EOM

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ: CONFIDENTIAL

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE: File RoP Classer

DATE: May 11, 1973

SUBJECT / OBJET: Memorandum to Cabinet - Capital Punishment

I attach revised pages 3, 4 and 5 of the Memorandum to Cabinet on capital punishment, pursuant to Mr. Lang's letter to Mr. Allmand. That letter is also attached.

The changes are:

p.3, para. f): The change is to require approval of two-thirds of the members of the Board rather than unanimous approval. The advantages and disadvantages have been re-worded accordingly.

p.4, para. 7A: The words "without amendment" have been inserted in the last line.

p.4, para. 7B(b): References to "aggravated murder" and "non-aggravated murder" have been deleted.

p.4, para. 7B(d)(ii): The expression "during the minimum period" has been changed to "until three years from the expiration of the minimum period".

p.5: References to "aggravated" and "non-aggravated" murder have been deleted.

Appendix C: This previously set out the definition of "capital murder" as it has existed since 1961. I have revised it so that it now sets out, for the information of the Cabinet, the basic definition of murder (sections 212 and 213) in the Code.

A. J. MacLeod.

AJM*EGH

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In addition, if this is a logical role for a judge in a murder trial, there would seem to be no reason for not extending that role to life sentences arising out of armed robbery, rape, kidnapping, hijacking and the like, where life sentences are not mandatory but are sometimes imposed.

e) Temporary absence or day parole without escort for an offender sentenced to life imprisonment for murder should be restricted during the minimum period that he is required to serve in custody:

The advantage of restrictions is that they would tend to satisfy the public that the punishment for murder is appropriately punitive and deterrent and that, for an extensive period of time, the public will be protected, as far as it is humanly possible to do so, from the offender.

The disadvantage of such a condition is that, for an extensive period of time, many rehabilitative programs involving the offender in the community could not be carried out.

f) In the most serious and reprehensible cases of murder, parole should be granted after the mandatory minimum period of custody, only with the approval of two-thirds of the members of the Parole Board:

The advantage of not requiring approval of the full Board is that one or two members who might wish to dissent would not, by disagreeing, have to sacrifice their principles or, by dissenting, have to endure the hostility or disdain of the remaining members.

The disadvantage of requiring only two-thirds is presumably that the public would be better satisfied that it is being protected if unanimous approval were required. Such a requirement would also add to the punitive and deterrent value of the life sentence for murder.

g) The Governor in Council should have authority under the law to reduce the mandatory minimum term of custody to a lesser term of years:

The advantage of making it possible for the Governor in Council to reduce the minimum period of custody is that it would enable the government, in proper cases involving the need for clemency, to alleviate the harshness of the law or the judge's judgment, having regard to all the circumstances of the case.

The disadvantage is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

COURSES OPEN TO THE GOVERNMENT

7. Among the courses open to the government would seem to be the following:

A. Let Bill C-2 continue, without government amendment, to decision by the House.

The danger of this is that, given the present mood of the House of Commons, the Bill might well be defeated which would leave the government in the difficult task of having to administer, without amendment, the pre-1967 law.

B. The undersigned proposes that Bill C-2 be amended to give effect to most of the factors set out in paragraph 6 above, in a manner that is likely to be supported by a majority of the House, as follows:

(a) there would be a total abolition of capital punishment for an indefinite period;

(b) "murder" would be defined as it was prior to 1961 (see Appendix C) and there would be no distinction between "capital" and "non-capital" murder, such as has existed since 1961;

(c) the sentence for murder would be a life sentence;

(d) in the case of "murder" the following conditions would apply:

(i) the minimum period of custody set out in the Criminal Code would be ten years, but the trial judge would have authority, at the time of sentencing, to impose a further minimum period of custody of all or any part of an additional ten years;

(ii) no temporary absence or day parole, without escort, would be permitted until three years from the expiration of the minimum period, as fixed by the statute or imposed by the trial judge, as the case may be; and

(iii) no full parole would be authorized during the minimum period of custody, as fixed by the statute or imposed by the trial judge, and thereafter only if two-thirds of the members of the Parole Board agreed.

There would be no reference to the Governor in Council for approval of parole but there would be authority in the Governor in Council to reduce the minimum period of custody to a lesser term of years than that required by law; and

(e) an extension of the minimum period of custody could be appealed to the court of appeal.

8. These conditions are designed to strengthen the screening process for the release from custody of convicted murderers serving life sentences while jeopardizing, as little as possible, the rehabilitation programs of federal correctional services.

9. To accept the proposals described in paragraph "B" above raises questions as to the rules that should govern the release on temporary absence or parole of persons who have already been convicted of murders. The new rules would be more restrictive than current rules in terms of years an inmate would be required to stay in custody and the granting of temporary absences and parole. It is suggested that these new rules should not have retroactive effect, and the present law should continue to apply to cases that have arisen or will arise prior to the coming into force of the proposed legislation.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

10. There would seem to be no obligation on the government to discuss the merits of any such proposed legislation with the provincial governments. There were no formal discussions with the provinces prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

11. The undersigned has consulted with the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

12. In the opinion of the undersigned, the proposals for amending Bill C-2 outlined above are likely to be preferred by a majority of Canadians to the scheme contained in Bill C-2.

CAUCUS CONSULTATION

13. There should be Caucus consultation after Cabinet has reached a tentative decision on the issues involved.

212. Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or any offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

(a) he means to cause bodily harm for the purpose of

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence,

and the death ensues from the bodily harm;

(b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;

(c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or

(d) he uses a weapon or has it upon his person

(i) during or at the time he commits or attempts to commit the offence, or

(ii) during or at the time of his flight after committing or attempting to commit the offence,

and the death ensues as a consequence.

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE - N/RÉFÉRENCE -
YOUR FILE - V/RÉFÉRENCE
DATE: May 11, 1973

SUBJECT / OBJET: Memorandum to Cabinet - Capital Punishment

Mr Macleod:
Finally have cab. Doc. finalized - See attention bottom page 4.

I attach revised pages 3, 4 and 5 of the Memorandum to Cabinet on capital punishment, pursuant to Mr. Lang's letter to Mr. Allmand. That letter is also attached. May 23/73

The changes are:

p.3, para. f): The change is to require approval of two-thirds of the members of the Board rather than unanimous approval. The advantages and disadvantages have been re-worded accordingly.

p.4, para. 7A: The words "without amendment" have been inserted in the last line.

p.4, para. 7B(b): References to "aggravated murder" and "non-aggravated murder" have been deleted.

p.4, para. 7B(d)(ii): The expression "during the minimum period" has been changed to "until three years from the expiration of the minimum period".

p.5: References to "aggravated" and "non-aggravated" murder have been deleted.

Appendix C: This previously set out the definition of "capital murder" as it has existed since 1961. I have revised it so that it now sets out, for the information of the Cabinet, the basic definition of murder (sections 212 and 213) in the Code.

A. J. MacLeod.
A. J. MacLeod.

001749

MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA

MINISTRE DE LA JUSTICE ET
PROCUREUR GÉNÉRAL DU CANADA

Ottawa K1A 0A6,
May 9th, 1973.

s.23

CONFIDENTIAL

The Honourable Warren Allmand, P.C., M.P.,
Solicitor General of Canada,
House of Commons,
Ottawa, Ontario.

Dear Warren,

[redacted]

s.23(f)

Yours sincerely,

Otto Lang.

SOLICITOR GENERAL | SOLLICITEUR GÉNÉRAL

CANADA

CONFIDENTIAL

Ottawa, Ontario
K1A 0P8

May 25, 1973

The Honourable Otto E. Lang,
Minister of Justice,
Justice Building,
Wellington Street,
Ottawa, Ontario.

Dear Otto,

I attach a draft Memorandum to Cabinet re possible amendments to Bill C-2 on Capital Punishment, which takes into account the view that you have expressed in your letter to me of May 9.

I would appreciate it if you could review the document and, if it is acceptable to you, indicate your concurrence by apposing your signature on the last page and return it to me.

Sincerely yours,

Warren Allmand,
Solicitor General

Enc.

In addition, if this is a logical role for a judge in a murder trial, there would seem to be no reason for not extending that role to life sentences arising out of armed robbery, rape, kidnapping, hijacking and the like, where life sentences are not mandatory but are sometimes imposed.

e) Temporary absence or day parole without escort for an offender sentenced to life imprisonment for murder should be restricted during the minimum period that he is required to serve in custody:

The advantage of restrictions is that they would tend to satisfy the public that the punishment for murder is appropriately punitive and deterrent and that, for an extensive period of time, the public will be protected, as far as it is humanly possible to do so, from the offender.

The disadvantage of such a condition is that, for an extensive period of time, many rehabilitative programs involving the offender in the community could not be carried out.

f) In the most serious and reprehensible cases of murder, parole should be granted after the mandatory minimum period of custody, only with the approval of two-thirds of the members of the Parole Board:

The advantage of not requiring approval of the full Board is that one or two members who might wish to dissent would not, by disagreeing, have to sacrifice their principles or, by dissenting, have to endure the hostility or disdain of the remaining members.

The disadvantage of requiring only two-thirds is presumably that the public would be better satisfied that it is being protected if unanimous approval were required. Such a requirement would also add to the punitive and deterrent value of the life sentence for murder.

g) The Governor in Council should, perhaps have authority under the law to reduce the mandatory minimum term of custody to a lesser term of years:

The advantage of making it possible for the Governor in Council to reduce the minimum period of custody is that it would enable the government, in proper cases involving the need for clemency, to alleviate the harshness of the law or the judge's judgment, having regard to all the circumstances of the case.

The disadvantage is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

COURSES OPEN TO THE GOVERNMENT

8. Among the courses open to the government would seem to be the following:

A. Let Bill C-2 continue, without government amendment, to decision by the House.

The danger of this is that, given the present mood of the House of Commons, the Bill might well be defeated which would leave the government in the difficult task of having to administer, without amendment, the pre-1967 law.

B. The undersigned proposes that Bill C-2 be amended to give effect to most of the factors set out in paragraph 6 above, in a manner that is likely to be supported by a majority of the House, as follows:

(a) there would be a total abolition of capital punishment for an indefinite period;

(b) "murder" would be defined as it was prior to 1961 (see Appendix B) and there would be no distinction between "capital" and "non-capital" murder, such as has existed since 1961;

(c) the sentence for murder would be a life sentence;

(d) in the case of "murder" the following conditions would apply:

(i) the minimum period of custody set out in the Criminal Code would be ten years, but the trial judge would have authority, at the time of sentencing, to impose a further minimum period of custody of all or any part of an additional ten years;

(ii) no temporary absence or day parole, without escort, would be permitted until three years from the expiration of the minimum period, as fixed by the statute or imposed by the trial judge, as the case may be; ~~and~~

(iii) no full parole would be authorized during the minimum period of custody, as fixed by the statute or imposed by the trial judge, and thereafter only if two-thirds of the members of the Parole Board agreed; and

~~There would be no reference to the Governor in Council for approval of parole but there would be authority in the Governor in Council to reduce the minimum period of custody to a lesser term of years than that required by law; and~~

(e) an extension of the minimum period of custody could be appealed to the court of appeal.

9. These conditions are designed to strengthen the screening process for the release from custody of convicted murderers serving life sentences while jeopardizing, as little as possible, the rehabilitation programs of federal correctional services.

10. To accept the proposals described in paragraph "B" above raises questions as to the rules that should govern the release on temporary absence or parole of persons who have already been convicted of murders. The new rules would be more restrictive than current rules in terms of years an inmate would be required to stay in custody and the granting of temporary absences and parole. It is suggested that these new rules should not have retroactive effect, and the present law should continue to apply to cases that have arisen or will arise prior to the coming into force of the proposed legislation.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

11. There would seem to be no obligation on the government to discuss the merits of any such proposed legislation with the provincial governments. There were no formal discussions with the provinces prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

12. The undersigned has consulted with the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

13. In the opinion of the undersigned, the proposals for amending Bill C-2 outlined above are likely to be preferred by a majority of Canadians to the scheme contained in Bill C-2.

CAUCUS CONSULTATION

14. There should be Caucus consultation after Cabinet has reached a tentative decision on the issues involved.

212. Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

213. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or any offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

(a) he means to cause bodily harm for the purpose of

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence,

and the death ensues from the bodily harm;

(b) he administers a stupefying or overpowering thing for a purpose mentioned in paragraph (a), and the death ensues therefrom;

(c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or

(d) he uses a weapon or has it upon his person

(i) during or at the time he commits or attempts to commit the offence, or

(ii) during or at the time of his flight after committing or attempting to commit the offence,

and the death ensues as a consequence.

Deputy Solicitor General Canada
Solliciteur général adjoint Canada

Ruby.

Keep a copy on file —
send original
to Jim MacD —

D.

June
May 10

001756

7530-21-029-9626

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: Mr. Roger Tassé
Deputy Solicitor General

FROM / DE: T.G. Street
Chairman, NPB

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	4 May 1973

SUBJECT / OBJET: BILL C-2 : CAPITAL PUNISHMENT

This is with respect to your request for comments on the above-mentioned Bill which Mr. Therrien acknowledged on 30th March.

Generally speaking, I do not agree with the idea of arbitrary or mandatory terms of imprisonment for any offence because this does not allow for flexibility in accordance with the individual circumstances of each case. However, in the present climate of public opinion, I presume it is necessary to increase the minimum period of ten years for eligibility for parole on a charge of aggravated murder. Before the present ten year minimum for eligibility was introduced we used to be able to parole deserving cases at any time and as a result, several of these people were released before ten years and are doing very well whereas otherwise they might not have been able to rehabilitate themselves as easily.

I certainly agree with the distinction between aggravated murder and non-aggravated murder. Rather than have a provision by which a judge can extend the minimum period for parole in the case of aggravated murder, I would have preferred that the minimum period of custody before eligibility for parole would be ten years for aggravated murder as it is now and seven years for non-aggravated murder as it is at the present time for capital and non-capital murder committed before 1968. In each case the eligibility is after ten years and for non-capital murder committed before January 1968 the minimum period of custody is sev en years.

I do not particularly subscribe to the idea of having a judge being able to extend the minimum period of custody because of the wide disparity of views amongst the judiciary. At least there is provision to relieve against this by reference to the Governor in Council.

I think the most important consideration is that this practice of giving temporary absences to prisoners convicted of murder should be discontinued because it is and always was completely illegal and it has caused a great deal of difficulty.

In view of the present climate of public opinion I think the proposed amendments are as satisfactory as we can expect.

T.G.S.

001757

141-206

Department of External Affairs

Canada

Ministère des Affaires extérieures

OTTAWA, KIA OG2.

May 3, 1973.

Dear Mr. Hollies,

Further to your recent telephone conversation with Mr. Dickson of this Division, we are pleased to enclose, as requested, documentation covering debate on the question of capital punishment at the 54th Session of ECOSOC. As you will note, this material includes the original draft resolution on this topic together with subsequent proposed revisions and amendments to this resolution. We also include a copy of telegram 618 of April 24, 1973, from our Permanent Mission in New York, which indicates the final disposition of this question.

We trust that this information is that which you require.

Yours sincerely,

A.W. Robertson,
Director,
Legal Advisory Division

J.H. Hollies, Q.C.,
Departmental Counsel,
Department of the Solicitor General,
Sir Wilfrid Laurier Bldg.,
OTTAWA, KIA OP8.

Capital Punishment

Statistics

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY CLASSIFICATION / DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	–
YOUR FILE – V/RÉFÉRENCE	
DATE	May 2, 1973

SUBJECT / OBJET: Capital Punishment - Statistics

On April 13 last Mr. Cobb asked Mr. Koz to prepare a summary of the information obtained from Statistics Canada regarding the occupation of convicted murderers for the last ten years and the occupation of persons charged with murder where the charge was reduced..

I attach the memorandum prepared by Mr. Koz in this matter, which he has addressed to me.

I have no comment except to say that I think it is a very thorough and useful piece of work.

Att.

A. J. MacLeod.

FYI. Jim MacDonald –
This will interest you,
May 9/73. J.C.

MEMORANDUM

CLASSIFICATION

TO
A

A.J.MacLeod,
Special Advisor on Correctional Policy

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

FROM
De

G.C.Koz

DATE April 25th, 1973.

FOLD

SUBJECT
Sujet

Capital Punishment: Occupations of Offenders

Earlier this year, the Minister requested additional information pertaining to the issue of capital punishment, namely:

(a) the occupation, by types or categories, of persons convicted of murders, for the last ten years;

(b) the occupation of persons charged with capital murders in respect of whom the charge was reduced to non-capital murder, for the last five years.

Accordingly, Statistics Canada were asked to examine the material in their possession in view of satisfying the ministerial inquiry. Such review has now been completed, and computer runs were produced, one for each year 1961 to 1970.

These computer runs have been transcribed in this office and separate tables prepared, showing the occupations of persons accused, sent to trial, acquitted and convicted. The specific item in ministerial inquiry, item (a) above, is shown in Appendix 'D'.

The second part of the inquiry, will be satisfied by the table shown in Appendix 'E'. The effect of the partial abolition of the death penalty, in December 1967, is evident in this summary. It would appear that before 1968 the courts resorted to reducing capital charges, with a frequency of 30-36 cases each year, no doubt in order to avoid the death penalty; while there was no reason to do so, in the same extent, since 1968. There has been only one capital charge reduced in 1968, four in 1969, none in 1970, and data is not available for 1971 and 1972. Because of the very small number of capital charges reduced to non-capital in 1968-1970, the occupations of such offenders would seem not to have any significance, as long as they do not stand out of the major groups of the incidence of capital murder. These few cases belong to the general trend, they are not exceptional in any respect. In other words, no single occupation and no "privileged" occupation has been favoured in these few cases of capital charge being reduced to non-capital.

The information provided by Statistics Canada is much more comprehensive than the specific questions asked by the Minister. A complete transcript of computer runs is given in appendices 'A' to 'D'. These tables show the distribution of homicide offenders by the type of occupation in 22 categories, which are used by Statistics Canada for other purposes.

CGSB – 6GP22B 7540-21-798-8998

These 22 categories are not identical with the scale of income, but allow to make inferences as to the range of income and of cultural patterns associated with different income groups.

A brief perusal of these lists will indicate that the categorization adopted by Statistics Canada singles out one occupation having the greatest incidence of homicides: unskilled labourers 34.5%, followed by construction workers 7.6%, housewives 7.2%, manufacturing and mechanical 7.0%, fishing, trapping, and logging 6.25%.

Such detailed categorization serves the purpose of the sociological viewpoint that crime (i.e. murder) is a social problem that afflicts the economically handicapped much more than the economically privileged. A similar criterion would apply to the administration of justice, wherein the rights of the "haves" are purported to be better protected than those of the "have nots".

However, comparisons between each group in the 22 categories would not be meaningful or leading to valid conclusions. For the present review, the 22 categories have been comprised into larger groups, sharing some essential socio-economic features. The occupations of the 1988 adults charged with homicide can therefore be shown as follows:

- managerial and professional occupations.....4% of all accused

- occupations requiring certain skill, providing more-or-less steady employment, and commanding fair-to-good income.....36% of all accused

- unskilled labourers, farm workers, domestic servants.....40% of all accused

- non-employed occupations: housewives, students, retired persons.....13% of all accused

- occupation not stated.....7% of all accused

Thus, Canadian Statistics tend to confirm observations or research findings in other countries that crime (i.e. murder) is a social phenomenon, with environmental criminogenic factors inherent in certain social classes or sub-cultural patterns. Canadian murder statistics clearly show that 76% of persons accused of homicide, 1961-70, belonged to the lower and middle working class; while only 4% were of the middle social class (as inferred by occupations).

These figures could serve the cause of abolition. If crime in general, and the crime of murder in particular, is the product of human drives and tendencies growing and developing in specific social and cultural environment, then the extreme penalty of taking the life of the offending individual amounts to discrimination against the racial origin or the social class to which the offender belongs.

This argument has already been used in support of the abolition of the death penalty, but was seldom backed by valid statistical evidence.

Regarding the often-heard allegations of unequal justice for the rich and the poor, the statistical evidence throws some light on this question, but not entirely as the critics would have it. The present review attempted to enquire how each occupational grpup was represented in the successive stages of the criminal justice process, from accusation of homicide to sentence for conviction of capital murder. The results are given as follows:

A. Employable Occupations: Charged and Convicted

Out of the 1988 adults charged with homicide, 1715 have completed trial; and the distribution of these by occupational groups was:

-- managerial and professional occupations. 3.9%
-- occupations requiring skill (better incomes) 38.4%
-- unskilled or low skill (low incomes) 40.3%

Of the 1715 adults for whom trial was completed, 1259 were convicted:

-- managerial and professional occupations 3.8%
-- occupations requiring skill 39.8%
-- unskilled or low skill 42.6%

Of the 1259 convicted, 435 were convicted of the theee categories of murder:

-- managerial and professional occupations 4.6%
-- occupations requiring skill 44.3%
-- unskilled or low skill 38.8%

Finally, 59 adults were convicted of capital murder:

-- managerial and professional occupations 3.4%
-- occupations requiring skill 52.5%
-- unskilled or low skill 27.1%

B. A C Q U I T T A L S

G r o u p	% of the accused (1988)	% of the acquitted (456)
Managerial and professional	4%	4.2%
Occupations requiring skill	36.6%	34.4%
Unskilled or low skill	40.0%	34.0%

C. Non-employable Occupations: Charged, Acquitted and Convicted

-- proportion in the 1988 adults accused 12.4%
-- proportion in 1715 who have completed trial 12.0%
-- proportion in the 1259 convicted of homicide 8.1%
-- proportion in the 435 convicted of murder 4.9%
-- proportion in the 59 convicted of capital murder . . . 6.8% (includes 4 youngsters under 18)

On the other hand, the proportion of acquittals was 22.8%

. . . . . (4)

S U M M A R Y

The statistical evidence presented tends to support the sociological viewpoint that the incidence of crime, incl. murder, is much more prevalent in the low-income and lower-working class.

The same evidence does not generally support the allegation of differential treatment in criminal courts, according to socio-economic status, for the most serious of offences, murder, one category of which calls for extreme penalty. In the successive stages of the criminal justice process for homicide cases, the selected groups of occupations have shown variations, but not as alleged:

-- the managerial-professional group consistently shows the same or very close proportion as in the total volume of the accused, 4%. There are differences in the range of fraction of 1%, which for a very small group is devoid of any real significance.

-- the non-employable group (housewives, students, retired persons) has been treated with obvious leniency, as their respective percentages decrease as the criminal process unfolded: 12%, 8.1%, 4.9%. However, it rose to 6.8% in convictions for capital murder due to the presence in this groups of "students", four of whom had been convicted of capital murder.
At the same time, this group attracted 22.8% of all acquittals, or nearly twice their proportion (12.4%) in the accused group.

-- the unskilled, low-income group of occupations, 40% of the total accused, maintained the same proportion in the "trial completed" group. It attracted only 34% of all acquittals, or below their rank in the accused group; also it accounted for 42.6 of all convictions of homicide -- and in this respect the well-known arguments of inadequate representation before the courts would perhaps gain support of statistical evidence if this matter was probed in greater detail.
On the other hand, this group accounted for 38.8% in convictions for murder and only 27.1% in convictions for capital murder. Perhaps the safeguards for the rights of citizens, built-in into the system of criminal justice, have overcome the socio-economic handicaps or earlier lack of Legal Aid, in cases calling for severe penalties.

-- the group of occupations consisting of a variety of skilled or semi-skilled workers, assumed to have fair-to-good incomes, was the only one that had shown a consisted progression through the stages of eliminating persons guilty of the most serious of homicides. This group of occupations, 36.6% in the total accused, accounted for nearly 40% of all convictions, more than 44% in convictions for murder, and 52.5% in convictions for capital murder.
Perhaps the sub-cultural patterns attributed to the traditional working class, are stronger in bearing criminogenic factors than the affluence of good incomes would indicate to the contrary.

-- in b r i e f, Canadian murder statistics, broken down by occupations, tend to show that for the most serious crime, murder, when the criminal justice process is applied in its full extent, the socially handicapped persons seem to receive more lenience, while the more privileged receive a full measure of justice. If this be true, then even if the death penalty is removed from the scale of sentences, the Canadian public can be assured that no privileged offender would escape his full measure of legal sanctions.

QUALIFYING REMARKS

The present review has been based on one set of statistical information, and this never permits to draw valid conclusions. Observations that were ma[illegible]re are tentative, not positive. Murder has other aspects than occupation or social class,

OCCUPATION OF PERSONS CHARGED WITH HOMICIDE IN CANADA
1961 - 1970

A. Employable or Income-earning Occupations

Category		Persons	% of total
Agriculture		74	3.7%
Armed Forces		20	1.0%
Clerical		42	2.1%
Commercial		53	2.65%
Communication		5	.25%
Construction		152	7.6%
Electrical		5	.25%
Finance		1	
Fishing, Trapping, Logging		125	6.25%
Labourer		691	34.5 %
Managerial		34	1.7%
Manufacturing and Mechanical		139	7.0%
Mining		17	.85%
Professional		43	2.2%
Service:	Domestic	32	1.6%
	Personal	68	3.4%
	Protective	7	.35%
	Other	11	.6 %
Transportation		84	4.2%

B. Non-Employable (non Income-earning) Occupations:

Housewife	145	7.2%
Student	71	3.5%
Retired	30	1.5%
C. Occupation not Known	139	7.0%
D. Total Charged with Homicide 1961-1970.	1988	100 %

Appendix "B"

OCCUPATION OF PERSONS CHARGED WITH HOMICIDE
and
DISPOSITION OF THE CHARGE, (CANADA, 1961-1970)

Category of Occupation	Not sent to trial	Unfit to stand trial	Await trial	Stay of Proceedings	Trial Completed
Agriculture	13	2		2	57
Armed Forces	2				18
Clerical	3				39
Commercial	5		1		47
Communication					5
Construction	10	1	3	2	136
Electrical					5
Finance					1
Fish-Trap-Logging	8			2	115
Labourer	48	15	2	17	609
Managerial	4				30
Manufact/Mechanical	7	4		2	126
Mining	1			1	15
Professional	5			1	37
Service: Domestic	3	1		2	26
Personal	8	1		1	58
Protective	1				6
Other		1			10
Transportation	6			1	77
Housewife	17	4	1	5	118
Student	2	2	1		66
Retired	6	1		1	22
Not Known	43	2		2	92
	192	34	8	39	

Avoided trial or trial or trial not completed..... 273

Trial completed..... 1715

Appendix 'C'

OCCUPATION of PERSONS SENT TO TRIAL on CHARGE of HOMICIDE AND ACQUITTED (CANADA, 1961-1970).

Category of Occupation	ACQUITTED OF: Capital Murder	Non-Capital Murder	Murder	Manslaughter	Lesser offence	Not Guilty, Insane	Total
Agriculture	2	5		3		6	16
Armed Forces		2				1	3
Clerical	2	2				6	10
Commercial	1	4		2		6	13
Communication					1		1
Construction	3	8	1	2		9	23
Electrical		1					1
Finance							
Fish, Trap, Logging	1	32	2	5	1	1	42
Labourer	14	65		19		31	129
Managerial		3		2		3	8
Manufact/Mechanical	5	13	1	4		7	30
Mining		1		1		1	3
Professional		5	1			5	11
Service: Domestic	1	2		2		5	10
Personal	3	5		2		6	16
Protective						2	2
Transportation	1	4		4	1	2	12
Housewife	2	35	3	8		22	70
Student		11	1	5	1	10	28
Retired	1	5					6
Not Known	3	10	1	2		5	21
	39	214	10	61	4	128	

Total acquitted and found not guilty by reason of insanity..... 456

OCCUPATION OF PERSONS SENT TO TRIAL ON CHARGE OF HOMICIDE, AND CONVICTED
(Canada, 1961-1970)

Category of Occupation	CONVICTED OF: Capital Murder: Death before 1968	Death after 1967	Life	Non-Capital murder before 1968	Non-Capital murder after 1967	Murder	Manslaughter	Lesser offence	Total
Agriculture				13	3		19	6	41
Armed Forces				3			9	3	15
Clerical	2			5	1		20	1	29
Commercial	2			16	2		13	1	34
Communication	1						2	1	4
Construction	7			29	2	1	66	8	113
Electrical				3			1		4
Finance							1		1
Fish-Trap-Logging	1		1	11	1	1	57	1	73
Labourer	13	1	1	129	20		290	26	480
Managerial	1			7	1		12	1	22
Manufact/Mechan.	7	1		36	3	2	44	3	96
Mining				3			8	1	12
Professional	1			9	1		13	2	26
Service: Domestic	1						11		12
Personal	1			4			31	2	38
Protective				8			4		12
Other	1			1			7		9
Transportation	7			17	1		37	3	65
Housewife				3			38	7	48
Student	1		3	10			23	1	38
Retired				4			10	2	16
Not Known	6			23	3		36	3	71
	52	2	5	334	38	4	752	72	
Total Convicted									1259

Convicted of:
- Capital murder: 59
- Non-Capital murder: 376
- Any murder: 435

Appendix "D"

OCCUPATION OF PERSONS CHARGED WITH CAPITAL MURDER and for whom the charge was R E D U C E D to Non-Capital Murder (Canada, 1961-1970).

Category of Occupation	1961	'62	'63	'64	'65	1966	'67	'68	'69	1970	Total	
Agriculture	1	2		2	3	2					10	57.
Armed Forces			1								1	.5
Clerical					1	3	1				5	2.5%
Commercial		1	1	3	2		1				8	4%
Communication											-	-
Construction	1	3	3	2	1	5	1		1		17	8.5%
Electrical			1								1	.5
Finance											-	-
Fish-Trapp, Logging		2		1	1	1					5	2.5%
Labourer	3	10	12	18	8	9	19		1		80	41%
Managerial					4	2	1				7	3.5
Manufact-g/Mechan.	1	3	4	4	3	2	2		2		21	10.5%
Mining		1		1							2	1%
Professional		1			1	1					3	1.5%
Service: Domestic					1						1	.5
Personal			1	1	1		1				4	2%
Protect.											-	-
Other					1						1	.5
Transportation		2	3	1	1	2					9	4.5%
Housewife											-	-
Student		2	1		1	2					6	3%
Retired					1	1					2	1%
Not Known	1	2	4	3	1	2	1				14	7%
	7	29	31	36	31	30	28	1	4	-	197	100%

MEMORANDUM

CLASSIFICATION

TO / A: A.J.MacLeod,
Special Advisor on Correctional Policy

YOUR FILE No. / Votre dossier

OUR FILE No. / Notre dossier

FROM / De: G.C.Koz

DATE: April 25th, 1973.

SUBJECT / Sujet: Capital Punishment: Occupations of Offenders

Earlier this year, the Minister requested additional information pertaining to the issue of capital punishment, namely:

(a) the occupation, by types or categories, of persons convicted of murders, for the last ten years;

(b) the occupation of persons charged with capital murders in respect of whom the charge was reduced to non-capital murder, for the last five years.

Accordingly, Statistics Canada were asked to examine the material in their possession in view of satisfying the ministerial inquiry. Such review has now been completed, and computer runs were produced, one for each year 1961 to 1970.

These computer runs have been transcribed in this office and separate tables prepared, showing the occupations of persons accused, sent to trial, acquitted and convicted. The specific item in ministerial inquiry, item (a) above, is shown in Appendix 'D'.

The second part of the inquiry, will be satisfied by the table shown in Appendix 'E'. The effect of the partial abolition of the death penalty, in December 1967, is evident in this summary. It would appear that before 1968 the courts resorted to reducing capital charges, with a frequency of 30-36 cases each year, no doubt in order to avoid the death penalty; while there was no reason to do so, in the same extent, since 1968. There has been only one capital charge reduced in 1968, four in 1969, none in 1970, and data is not available for 1971 and 1972. Because of the very small number of capital charges reduced to non-capital in 1968-1970, the occupations of such offenders would seem not to have any significance, as long as they do not stand out of the major groups of the incidence of capital murder. These few cases belong to the general trend, they are not exceptional in any respect. In other words, no single occupation and no "privileged" occupation has been favoured in these few cases of capital charge being reduced to non-capital.

The information provided by Statistics Canada is much more comprehensive than the specific questions asked by the Minister. A complete transcript of computer runs is given in appendices 'A' to 'D'. These tables show the distribution of homicide offenders by the type of occupation in 22 categories, which are used by Statistics Canada for other purposes.

CGSB – 6GP22B 7540-21-796-6998

These 22 categories are not identical with the scale of income, but allow to make inferences as to the range of income and of cultural patterns associated with different income groups.

A brief perusal of these lists will indicate that the categorization adopted by Statistics Canada singles out one occupation having the greatest incidence of homicides: unskilled labourers 34.5%, followed by construction workers 7.6%, housewives 7.2%, manufacturing and mechanical 7.0%, fishing, trapping, and logging 6.25%.

Such detailed categorization serves the purpose of the sociological viewpoint that crime (i.e. murder) is a social problem that afflicts the economically handicapped much more than the economically privileged. A similar criterion would apply to the administration of justice, wherein the rights of the "haves" are purported to be better protected than those of the "have nots".

However, comparisons between each group in the 22 categories would not be meaningful or leading to valid conclusions. For the present review, the 22 categories have been comprised into larger groups, sharing some essential socio-economic features. The occupations of the 1988 adults charged with homicide can therefore be shown as follows:

- managerial and professional occupations.....4% of all accused

- occupations requiring certain skill, providing more-or-less steady employment, and commanding fair-to-good income.....36% of all accused

- unskilled labourers, farm workers, domestic servants.....40% of all accused

- non-employed occupations: housewives, students, retired persons.....13% of all accused

- occupation not stated.....7% of all accused

Thus, Canadian statistics tend to confirm observations or research findings in other countries that crime (i.e. murder) is a social phenomenon, with environmental criminogenic factors inherent in certain social classes or sub-cultural patterns. Canadian murder statistics clearly show that 76% of persons accused of homicide, 1961-70, belonged to the lower and middle working class; while only 4% were of the middle social class (as inferred by occupations).

These figures could serve the cause of abolition. If crime in general, and the crime of murder in particular, is the product of human drives and tendencies growing and developing in specific social and cultural environment, then the extreme penalty of taking the life of the offending individual amounts to discrimination against the racial origin or the social class to which the offender belongs.

This argument has already been used in support of the abolition of the death penalty, but was seldom backed by valid statistical evidence.

Regarding the often-heard allegations of unequal justice for the rich and the poor, the statistical evidence throws some light on this question, but not entirely as the critics would have it. The present review attempted to enquire how each occupational grpup was represented in the successive stages of the criminal justice process, from accusation of homicide to sentence for conviction of capital murder. The results are given as follows:

A. Employable Occupations: Charged and Convicted

Out of the 1988 adults charged with homicide, 1715 have completed trial; and the distribution of these by occupational groups was:

-- managerial and professional occupations. 3.9%
-- occupations requiring skill (better incomes) 38.4%
-- unskilled or low skill (low incomes) 40.3%

Of the 1715 adults for whom trial was completed, 1259 were convicted:

-- managerial and professional occupations 3.8%
-- occupations requiring skill 39.8%
-- unskilled or low skill 42.6%

Of the 1259 convicted, 435 were convicted of the three categories of murder:

-- managerial and professional occupations 4.6%
-- occupations requiring skill 44.3%
-- unskilled or low skill 38.8%

Finally, 59 adults were convicted of capital murder:

-- managerial and professional occupations 3.4%
-- occupations requiring skill 52.5%
-- unskilled or low skill 27.1%

B. A C Q U I T T A L S

Group	% of the accused (1988)	% of the acquitted (456)
Managerial and professional	4%	4.2%
Occupations requiring skill	36.6%	34.4%
Unskilled or low skill	40.0%	34.0%

C. Non-employable Occupations: Charged, Acquitted and Convicted

-- proportion in the 1988 adults accused 12.4%
-- proportion in 1715 who have completed trial 12.0%
-- proportion in the 1259 convicted of homicide 8.1%
-- proportion in the 435 convicted of murder 4.9%
-- proportion in the 59 convicted of capital murder . . . 6.8% (includes 4 youngsters under 18

On the other hand, the proportion of acquittals was 22.8%

. . . . . (4)

S U M M A R Y

The statistical evidence presented tends to support the sociological viewpoint that the incidence of crime, incl.murder, is much more prevalent in the low-income and lower-working class.

The same evidence does not generally support the allegation of differential treatment in criminal courts, according to socio-economic status, for the most serious of offences,murder, one category of which calls for extreme penalty. In the successive stages of the criminal justice process for homicide cases, the selected groups of occupations have shown variations, but not as alleged:

-- the managerial-professional group consistently shows the same or very close proportion as in the total volume of the accused, 4%. There are differences in the range of fraction of 1%, which for a very small group is devoid of any real significance.

-- the non-employable group(housewives, students, retired persons) has been treated with obvious leniency, as their respective percentages decrease as the criminal process unfolded: 12%, 8.1%, 4.9%. However, it rose to 6.8% in convictions for capital murder due to the presence in this groups of"students", four of whom had been convicted of capital murder.
At the same time, this group attracted 22.8% of all acquittals, or nearly twice their proportion (12.4%) in the accused group.

-- the unskilled,low-income group of occupations, 40% of the total accused, maintained the same proportion in the "trial completed" group. It attracted only 34% of all acquittals, or below their rank in the accused group; also it accounted for 42.6 of all convictions of homicide -- and in this respect the well-known arguments of inadequate representation before the courts would perhaps gain support of statistical evidence if this matter was probed in greater detail.
On the other hand , this group accounted for 38.8% in convictions for murder and only 27.1% in convictions for capital murder. Perhaps the safeguards for the rights of citizens, built-in into the system of criminal justice, have overcome the socio-economic handicaps or earlier lack of Legal Aid, in cases calling for severe penalties.

-- the group of occupations consisting of a variety of skilled or semi-skilled workers, assumed to have fair-to-good incomes, was the only one that had shown a consisted progression through the stages of eliminating persons guilty of the most serious of homicides. This group of occupations, 36.6% in the total accused, accounted for nearly 40% of all convictions, more than 44% in convictions for murder, and 52.5% in convictions for capital murder.
Perhaps the sub-cultural patterns attributed to the traditional working class,are stronger in bearing criminogenic factors than the affluence of good incomes would indicate to the contrary.

-- in b r i e f, Canadian murder statistics, broken down by occupations, tend to sho that for the most serious crime, murder, when the criminal justice process is applied in its full extent, the socially handicapped persons seem to receive more lenience,while the more privileged receive a full measure of justice. If this be true, then even if the death penalty is removed from the scale of sentences, the Canadian public can be assured that no privileged offender would escape his full measure of legal sanctions.

QUALIFYING REMARKS

The present review has been based on one set of statistical 001773 s tion,and this never permits to draw valid conclusions. Observations that were ma... ...v

OCCUPATION OF PERSONS CHARGED WITH HOMICIDE IN CANADA
1961 - 1970

A. Employable or Income-earning Occupations

Category		Persons	% of total
Agriculture		74	3.7%
Armed Forces		20	1.0%
Clerical		42	2.1%
Commercial		53	2.65%
Communication		5	.25%
Construction		152	7.6%
Electrical		5	.25%
Finance		1	
Fishing, Trapping, Logging		125	6.25%
Labourer		691	34.5 %
Managerial		34	1.7%
Manufacturing and Mechanical		139	7.0%
Mining		17	.85%
Professional		43	2.2%
Service:	Domestic	32	1.6%
	Personal	68	3.4%
	Protective	7	.35%
	Other	11	.6 %
Transportation		84	4.2%

B. Non-Employable (non Income-earning) Occupations:

Housewife	145	7.2%
Student	71	3.5%
Retired	30	1.5%
C. Occupation not Known	139	7.0%
D. Total Charged with Homicide 1961-1970.	1988	100 %

Appendix 'B'

OCCUPATION OF PERSONS CHARGED WITH HOMICIDE
and
DISPOSITION OF THE CHARGE, (CANADA, 1961-1970)

Category of Occupation	Not sent to trial	Unfit to stand trial	Await trial	Stay of Proceedings	Trial Completed
Agriculture	13	2		2	57
Armed Forces	2				18
Clerical	3				39
Commercial	5		1		47
Communication					5
Construction	10	1	3	2	136
Electrical					5
Finance					1
Fish-Trap-Logging	8			2	115
Labourer	48	15	2	17	609
Managerial	4				30
Manufact/Mechanical	7	4		2	126
Mining	1			1	15
Professional	5			1	37
Service: Domestic	3	1		2	26
Personal	8	1		1	58
Protective	1				6
Other		1			10
Transportation	6			1	77
Housewife	17	4	1	5	118
Student	2	2	1		66
Retired	6	1		1	22
Not Known	43	2		2	92
	192	34	8	39	

Avoided trial or trial or trial not completed.....273

Trial completed..... 1715

OCCUPATION of PERSONS SENT TO TRIAL on CHARGE of HOMICIDE AND ACQUITTED (CANADA, 1961-1970).

Category of Occupation	ACQUITTED OF: Capital Murder	Non-Capital Murder	Murder	Manslaughter	Lesser offence	Not Guilty, Insane	Total
Agriculture	2	5		3		6	16
Armed Forces		2				1	3
Clerical	2	2				6	10
Commercial	1	4		2		6	13
Communication					1		1
Construction	3	8	1	2		9	23
Electrical		1					1
Finance							
Fish, Trap, Logging	1	32	2	5	1	1	42
Labourer	14	65		19		31	129
Managerial		3		2		3	8
Manufact/Mechanical	5	13	1	4		7	30
Mining		1		1		1	3
Professional		5	1			5	11
Service: Domestic	1	2		2		5	10
Personal	3	5		2		6	16
Protective						2	2
Transportation	1	4		4	1	2	12
Housewife	2	35	3	8		22	70
Student		11	1	5	1	10	28
Retired	1	5					6
Not Known	3	10	1	2		5	21
	39	214	10	61	4	128	

Total acquitted and found not guilty by reason of insanity..... 456

OCCUPATION OF PERSONS SENT TO TRIAL ON CHARGE OF HOMICIDE, AND CONVICTED
(Canada, 1961-1970)

Category of Occupation	CONVICTED OF: Capital Murder: Death before 1968	Death after 1967	Life	Non-Capital murder: before 1968	after 1967	Murder	Manslaughter	Lesser offence	Total
Agriculture				13	3		19	6	41
Armed Forces				3			9	3	15
Clerical	2			5	1		20	1	29
Commercial	2			16	2		13	1	34
Communication	1						2	1	4
Construction	7			29	2	1	66	8	113
Electrical				3			1		4
Finance							1		1
Fish-Trap-Logging	1		1	11	1	1	57	1	73
Labourer	13	1	1	129	20		290	26	480
Managerial	1			7	1		12	1	22
Manufact/Mechan.	7	1		36	3	2	44	3	96
Mining				3			8	1	12
Professional	1			9	1		13	2	26
Service: Domestic	1						11		12
Personal	1			4			31	2	38
Protective				8			4		12
Other	1			1			7		9
Transportation	7			17	1		37	3	65
Housewife				3			38	7	48
Student	1		3	10			23	1	38
Retired				4			10	2	16
Not Known	6			23	3		36	3	71
	52	2	5	334	38	4	752	72	
Total Convicted									1259

Convicted of:
- Capital murder.....59
- Non-Capital murder.....376
- Any murder.....435

OCCUPATION OF PERSONS CHARGED WITH CAPITAL MURDER
and for whom the charge
was R E D U C E D to Non-Capital Murder (Canada, 1961-1970).

Category of Occupation	1961	'62	'63	'64	'65	1966	'67	'68	'69	1970	Total	
Agriculture	1	2		2	3	2					10	57.
Armed Forces			1								1	.5
Clerical					1	3	1				5	2.5%
Commercial		1	1	3	2		1				8	4%
Communication											-	-
Construction	1	3	3	2	1	5	1		1		17	8.5%
Electrical			1								1	.5
Finance											-	-
Fish-Trapp, Logging		2		1	1	1					5	2.5%
Labourer	3	10	12	18	8	9	19		1		80	41%
Managerial					4	2	1				7	3.5
Manufact-g/Mechan.	1	3	4	4	3	2	2		2		21	10.5
Mining		1		1							2	1%
Professional		1			1	1					3	1.5%
Service: Domestic					1						1	.5
Personal			1	1	1		1				4	2%
Protect.											-	-
Other					1						1	.5
Transportation		2	3	1	1	2					9	4.5%
Housewife											-	-
Student		2	1		1	2					6	3%
Retired					1	1					2	1%
Not Known	1	2	4	3	1	2	1				14	7%
	7	29	31	36	31	30	28	1	4	-	197	100%

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

141-206

TO / A: DEPUTY SOLICITOR GENERAL

FROM / DE: ASSISTANT DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE: File Classer

DATE: April 24th, 1973

SUBJECT / OBJET:

I am informed by Statistics Canada that they expect to have the report on murder in their hands approximately one month from now. It is intended at that time to review with us and any other interested departments, the result of the study before deciding on publication.

Mr. Rowebottom has indicated that the report might be speeded up if we felt this was desirable. I said that I would let him know by the end of the week.

B.C. Hoffley.

Copy re. 83-3

Clauses 10 to 12

Moved by

That Bill C-2 be amended by striking out clauses 10 and 11 and by renumbering clause 12 as clause 10.

Clause 8

Moved by

That Bill C-2 be amended

(a) by striking out line 22 on page 4 and substituting the following:

'period, and'

(b) by striking out line 26 on page 4 and substituting the following:

'death,'

(c) by striking out lines 27 to 30 on page 4; and

(d) by striking out line 38 on page 4 and substituting the following:

'death on the day that it so sentenced him.'

Ottawa, Ontario,
K1A 0P8

April 19, 1973

The Honourable Allan J. MacEachen, P.C., M.P.,
President of the Queen's Privy Council for Canada,
House of Commons,
Ottawa, Ontario

My dear Colleague:

As you will recall, legislation regarding capital punishment was introduced by Bill C-2 which was given first reading on January 11, 1973. Since that time, occasions for debate have been sporadic and infrequent, in spite of the announcement by the Prime Minister that this was a matter to which the government attached a high degree of priority.

May I suggest that the time has now come to set aside time in the House so that this Bill can receive second reading, and be referred to the Standing Committee on Justice and Legal Affairs. Permit me to point out that with the law in its present state there are a number of instances now before the courts in which people have been charged with capital murder in circumstances where the alleged offence would have been non-capital under the previous law. If the proposed new legislation or some variation of it is allowed to remain for a considerable time in limbo, it will be inevitable that a number of these cases will ultimately require consideration by Cabinet to determine whether the death sentence should be commuted. This possibility is one that I am sure we should all find very distasteful and which I submit we should take all reasonable measures to guard against.

I have been pleased to learn that the other parties have agreed that the second week in May would be an appropriate time to resume debate on the Bill. I do hope that you will find it possible to see that Bill C-2 is in fact made the subject of debate during that time.

Yours sincerely,

Original Signed by
Original Signé par
Warren Allmand
Warren Allmand,
Solicitor General

JHH/RT/ROP

c.c. for the information of:
The Right Honourable Pierre Elliott Trudeau, P.C., Q.C., M.P.
Prime Minister of Canada

The Honourable Otto E; Lang, P.C., M.P.,
Minister of Justice and Attorney General of Canada

Deputy Solicitor General
Canada

Solliciteur général adjoint
Canada

(1)

Mr. J. McDonald 2L → we have seen this.
Mr. A. J. MacLeod, Q.C. BY
Mr. J. H. Hollies, Q.C. JHH.

To note and return to D.S.G.

2L

W.

April 24, 1973 (2) DSG.

Returned.
[illegible]
24 Apr 73

001783

7530-21-029-8626

PRIVY COUNCIL OFFICE
BUREAU DU CONSEIL PRIVÉ

MEMORANDUM

le 16 avril 1973

M. Roger Tassé
Soliciteur général adjoint
Pièce 323
Edifice Sir Wilfrid Laurier
O t t a w a

Me Tassé,

Le dernier paragraphe de ce télégramme, que tu as peut-être reçu, semble indiquer que l'opinion publique en Grande-Bretagne est sensiblement la même qu'au Canada sur la question de la peine capitale.

Michel Trottier

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: Mr. G.C. Koz

FROM / DE: D.G. Cobb
Executive Assistant to the
Deputy Solicitor General

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: April 13, 1973

SUBJECT / OBJET: CAPITAL PUNISHMENT - STATISTICS

Attached is a memorandum to the Minister from the Deputy Solicitor General.

The Deputy Solicitor General would appreciate it if you would prepare a summary of the information obtained from Statistics Canada regarding the occupation of convicted murderers for the last ten years, and the occupation of persons charged with murder where the charge was reduced.

D.G. Cobb

ml
Att.

BF 20-4-73

noted
16/4/73

001785

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: MR. D.G. COBB

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	April 10, 1973

SUBJECT / OBJET: CAPITAL PUNISHMENT - STATISTICS

1. Attached is a copy of my memorandum to the Minister regarding the above.

2. I would appreciate it if Mr. Koz were to prepare the summary of the information obtained from Statistics Canada regarding the occupation of convicted murderers for the last ten years, and the occupation of persons charged with murder where the charge was reduced.

Roger Tassé

Enc.

CGSB STANDARD FORM 22d 7540-21-865-6699 FORMULE NORMALISÉE 22d DE L'ONGC

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
O
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE
April 10, 1973

SUBJECT / OBJET: Capital Punishment - Statistics

1. Some time ago you had asked me to get together the following information:

(a) the occupation, by types or categories, of those convicted or murders (both capital and non-capital) for the last ten years;

(b) the occupation of persons charged with capital murders in respect of whom the charge was reduced to non-capital murder for the last five years;

(c) the rate of murders of policemen in retentionist and non-retentionist States in the United States.

2. Statistics Canada has provided us with a computer run regarding the information referred to in paragraphs (a) and (b) above and this has been passed on to Jim McDonald.

3. Data on the incidence of policemen murdered in the U.S. has been obtained through the courtesy of the F.B.I. and the RCMP. Attached you will find a list of abolitionist and retentionist States with the respective incidence of policemen murdered in 1971 and 1972. Also attached you will find some comments regarding this data, prepared by Mr. Koz of the Secretariat.

4. We are currently working on a summary of the information obtained from Statistics Canada regarding paragraphs (a) and (b) above, and this will be provided to you as soon as it is available.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

RT/hl

Roger Tassé

c.c. Mr. Jim McDonald

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

TO / À: MR. D.G. COBB

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	April 10, 1973

SUBJECT / OBJET: CAPITAL PUNISHMENT - STATISTICS

1. Attached is a copy of my memorandum to the Minister regarding the above.

2. I would appreciate it if Mr. Koz were to prepare the summary of the information obtained from Statistics Canada regarding the occupation of convicted murderers for the last ten years, and the occupation of persons charged with murder where the charge was reduced.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

Roger Tassé

RT/hl

Enc.

001788

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: April 10, 1973

SUBJECT / OBJET: Capital Punishment - Statistics

1. Some time ago you had asked me to get together the following information:

(a) the occupation, by types or categories, of those convicted or murders (both capital and non-capital) for the last ten years;

(b) the occupation of persons charged with capital murders in respect of whom the charge was reduced to non-capital murder for the last five years;

(c) the rate of murders of policemen in retentionist and non-retentionist States in the United States.

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4. We are currently working on a summary of the information obtained from Statistics Canada regarding paragraphs (a) and (b) above, and this will be provided to you as soon as it is available.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

Roger Tassé

RT/hl

c.c. Mr. Jim McDonald

001789

ACTION REQUEST – FICHE DE SERVICE

GOVERNMENT OF CANADA — GOUVERNEMENT DU CANADA

FILE NO.—*DOSSIER Nº*	DATE

TO—*À*

Mr. Roger Tassé

FROM—*DE*

D.G. Cobb

☐ PLEASE CALL *PRIÈRE D'APPELER*	TEL. NO.—*Nº TEL.*	EXTENSION—*POSTE*
☐ WANTS TO SEE YOU *DÉSIRE VOUS VOIR*	DATE	TIME—*HEURE*
☐ WILL CALL AGAIN *DOIT RAPPELER*		

- ☐ ACTION *DONNER SUITE*
- ☐ COMMENTS *COMMENTAIRES*
- ☐ MAKE *FAIRE .....COPIES*
- ☐ NOTE & RETURN *NOTER ET RETOURNER*
- ☐ APPROVAL *APPROBATION*
- ☐ DRAFT REPLY *PROJET DE RÉPONSE*
- ☐ NOTE AND FILE *NOTER ET CLASSER*
- ☐ NOTE & FORWARD *NOTER ET FAIRE SUIVRE*

The attached was requested by your memorandum of Feb. 23/73

CALL RECEIVED BY *MESSAGE REÇU PAR*

TIME *HEURE* 001790

MEMORANDUM

CLASSIFICATION

TO
A

Mr.D.G.Cobb
Executive Assistant to the D.S.G.

YOUR FILE No.
Votre dossier

OUR FILE No.
Notre dossier

FROM
De

G.C.Koz

DATE 26 March 1973

FOLD

SUBJECT
Sujet

Data on Capital Punishment

This refers to the memo of February 23,1973, from the D.S.G. to you, regarding the rounding up of certain information for the Minister:

(a) the occupation of murderers convicted for the last 10 years;

(b) the occupation of persons charged with murder, for whom the charge was reduced

--- Statistics Canada have provided a computer run of this information, and as you indicated verbally, I passed this material to Mr J.MacDonald

(c) the date on the incidence of policemen murdered in the U.S.A.

--- this information has been obtained, courtesy of F.B.I. and R.C.M.P. Attached is a list of abolitionist and retentionist states with respective incidence of policemen murdered in 1971 and 1972. I have also appended comments to this data: Mr A.J.MacLeod was going to look through these comments but he is down with 'flu today and I wish not to delay the information any further. He will see it on his return to office.

N.B.: I am presently loaded with another assignment for the Minister (summary of studies, consultants reports, research projects). I would gladly complete a summary of information in (a) and (b) above, if someone else does not produce it in the meantime.

G.C.K.

001791

BRIEF FOR THE SOLICITOR GENERAL:

Capital Punishment -- Murders of Policemen in the U.S.A. (March 1973)

The inquiry, as worded, indicates an interest in the deterrent effect of capital punishment with regard to murders of policemen in those States that have abolished death penalty and those that still retain it. The information required has been obtained from the F.B.I., through the courtesy of the liaison offices of the R.C.M.P.; and the attached list has been prepared from such information.

The following comments are added:

- the incidence of murder of policeman is not in itself an adequate indicator w/r to deterrence; the incidence of all murders in any geographical area should be used as comparative background

- the incidence of murders, and comparison between the abolitionist and retentionist states, for any <u>single</u> year, is not an adequate indicator of the conditions prevailing over a longer period of time. Because of a very small number of incidents involved, a fluctuation of one or two makes a very large percentage change

-- taking the <u>average</u> incidence for a very large population in disparate regions is not a good indicator of the prevalence of murder. In 1971, one half of abolitionist states, 11 out of 22, had no murder of policemen at all; while in other abolitionist states the

(rates)

rates ranged from as little as one policeman murdered for 3.9 million (Tennessee), through one in 1 million (New York, Michigan, Oregon), to a heavy rate of one for every half-million (Arizona).

Similar differences are noted within the retentionist states. In 1971, less than one-third, or 8 out of 29, retentionist states had no incidence of policeman murdered. In other states, the rates ranged from one in 5 million (Ohio), through 1:1.5 M (California, Georgia), 1 in one million (Alabama) to the heavy rates of 1:0.76 (Texas) and 1:o.66 M (Kentucky). However, even the low 1971 rate in Ohio, 1:5.3 M, was upset in 1972 with 7 murders instaed of 2 in the preceding year, bringing the rate to 1:1.5 M -- this may well illustrate both the fluctuating nature of the incidence of murdering policemen and its unpredictability.

- Drawing on the knowledge ré:etiology of crime, it is known that significant differences exist between rural and industrial regions, between small and populous areas (the criminogenic effect of urbanization). Accordingly, more significant differences are evident between the abolitionist states of Kansas or Washington (no murders of policemen in 1971) and the heavily industrialized abolitionist states of Michigan and New York. Similar comparison is also evident on the side of retentionist states, with the less populous states showing no murders of policemen in 1971 (Idaho, Montana, Nevada, etc) as against the concentration of murders of policemen in large and industrial states (California, Texas, Illinois).

. . . . . (3)

- The more appropriate comparison of the deterrent effect of capital punishment would be through selective groups of states, to be in the same socio-economic range: rural abolitionist with rural retentionist, etc.

- One aspect shown on the 1971-72 list is an apparent effect of the L.E.A.A. programs, in that the incidence of murdering policemen was reduced in <u>both</u>, the abolitionist states (Arizona, New York) Michigan) and the retentionist states (California, Texas, New Jersey, Illinois.) However, these changes are perhaps temporary, and they are offset by the increase in the incidence of murdering policemen, in <u>both</u> the abolitionist states (Minnesota, Missouri) and the retentionist states (Arkansas, Florida, Georgia, Louisiana, North Carolina, Pennsylvania).

- The last example, affecting the increase of murders of policemen in the S-E area of the U.S.A. again underlines the social and economic factors in crime, as the five states involved are the sources of social unrest and racial hatred.

<u>IN SUMMARY</u>: the comparison of incidence of murders of policemen in the abolitionist and retentionist states in the U.S.A., for given years 1971 and 1972, could not be considered conclusive as to the deterrent effect of the death penalty on the murder of policemen.

Prepared by:
G.C. Koz
March 1973

Abolitionist States (cont'd)

Retentionist States (cont'd)

		1971	1972
Pennsylvania	11,875,000	4	7
S-Carolina	2,600,000	3	1
Texas	11,450,000	15	10
Utah	1,100,000	1	-
Virginia	4,700,000	2	2
Wyoming	340,000	-	1
	121,665,000	86	80

COMPARATIVE RATES:

Year 1971

one murder of policeman for 1.6 million

one murder of policeman for 1.4 million

Year 1972 (allowing 2% increase in population)

one murder of policeman for 2 million

one murder of policeman for 1.53 million

NOTE: these average rates are not a good indicator w/r to the issue of capital punishment (even if they favour the abolitionist cause) -- see the narrative attached

Prepared by:
G.C. Koz
19 March 1973

MURDERS OF POLICEMEN IN THE USA, 1971-1972

SOURCE: F.B.I. unpublished data, obtained on request

ABOLITIONIST STATES	Population	Number of policemen murdered 1971-1972		RETENTIONIST STATES	Population	Number of policemen murdered 1971-1972	
Alaska	313,000	1	1	Alabama	3,475,00	3	3
Arizona	1,800,000	4	-	Arkansas	1,900,000	-	3
Colorado	2,200,000	1	1	California	20,000,000	14	6
Delaware	558,000	-	2	Connecticut	3,000,000	1	-
Hawaii	789,000	-	-	Florida	7,000,000	3	5
Iowa	2,800,000	2	-	D of Columbia	1,500,000	4	-
Kansas	2,200,000	-	1	Georgia	4,600,000	3	6
Maine	1,000,000	-	-	Idaho	700,000	-	1
Michigan	9,000,000	8	5	Illinois	11,200,000	6	3
Minnesota	3,800,000	1	4	Indiana	5,200,000	4	3
Missouri	4,700,000	3	5	Kentucky	3,300,000	5	2
N-Mexico	1,000,000	-	-	Louisiana	3,600,000	-	5
N-York	18,000,000	16	5	Maryland	4,000,000	2	2
N-Dakota	625,000	1	-	Massachusetts	5,700,000	-	-
Oregon	2,150,000	2	-	Mississippi	2,200,000	2	1
Rhode Island	960,000	-	-	Montana	700,000	-	-
S-Dakota	670,000	-	1	Nebraska	1,500,000	1	-
Tennessee	3,900,000	1	2	Nevada	500,000	-	-
Vermont	450,000	-	1	N-Hampshire	700,000	1	-
Washington	3,450,000	-	1	N-Jersey	7,300,000	4	1
Wisconsin	4,475,000	-	1	N-Carolina	5,150,000	2	7
W-Virginia	1,750,000	-	2	Ohio	10,775,000	2	7
	66,590,000	40	32	Oklahoma	2,600,000	4	4

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

File / Classer

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: April 4, 1973

SUBJECT / OBJET: Capital Punishment

Further to my memorandum of March 20 last, I attach copy of President Nixon's Message to Congress of March 14 last in connection with the death penalty, and also copy of a memorandum prepared by Mr. Matas on the division of jurisdiction between Congress and the State Legislatures in the field of criminal law.

Atts.

A. J. MacLeod.

AJM*EGM

001797

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: A.J. MacLEOD,
SPECIAL ADVISOR ON
CORRECTIONAL POLICIES

FROM / DE: DAVID MATAS,
SPECIAL ASSISTANT.

SECURITY CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: March 27, 1973

SUBJECT / OBJET: CAPITAL PUNISHMENT AND CRIMINAL LAW JURISDICTION

In Canada the criminal law power is given explicitly to the Federal Government, Section 91 (27) British North America Act. In the United States, the criminal law power is given explicitly to neither the Federal Government nor the States Governments. Since the States of the United States are given the residuary powers not otherwise allocated by the Constitution, American criminal law power resides in the States. Amendment 10 of the United States Constitution states that the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States.

The Canadian Constitution has no residuary power, but rather a comprehensive power in the FEderal Government for peace, order and good government of Canada, from which the Provincial powers are accepted. In the result, the residuum of powers goes to the Federal Government, rather than to the Provincial Governments. So, even if the criminal law power were not explicitly allocated to the Federal Government, but instead not mentioned at all in the British North America Act, it would nonetheless remain in the Federal Government.

Although the American Federal Government is not given the general criminal law jurisdiction, it has three sources of criminal law jurisdiction. It has jurisdiction over specific crimes; it has a territorial jurisdiction; and it has a co-efficient, elastic or ancillary jurisdiction.

Although the American Federal Government has jurisdiction to define and punish piracies and felonies committed on the high seas and offences against the law of nations, Article 1, Section 8, Clause 10, U.S. Constitution. It has jurisdiction to provide for the punishment of counterfeiting the securities and current coins of the United States, Article 1, Section 8, Clause 6. Congress has the power to declare the punishment of treason, Article 3, Section 3.

.... 2

Clause 2. In Canada there is no power to punish specific crimes allocated either to the Federal Government or to the Provinces.

The Congress is given power to make all needful rules and regulations respecting the territorial or other property belonging to the United States, Article 4, Section 3, Clause 2. It has exclusive jurisdiction over the District of Columbia and over all buildings purchased for the erection of forts, magazines, arsenals, dock yards and other individual buildings, Article 1, Section 8, Clause 17. The Parliament of Canada is given power to make provision for the administration, peace, order and good government of any territory not for the time being included in any province, Section 4, British North America Act (1871), 30-35, Vic. C. 28. It is also given exclusive jurisdiction to make laws about the public properties S.91(1A) British North America Act (1867). Since Parliament already has the criminal law power, its territorial and property power is not necessary to found a criminal jurisdiction.

Thirdly, Congress has power to make all laws necessary and proper for carrying into execution its other powers Article 1, Section 8, Clause 18. In Canada, the Provincial Legislatures are given the power to impose punishment, by fine, penalty or imprisonment, for enforcing any law of the province made in relation to any matter coming within the classes of subjects within the exclusive jurisdiction of the provinces, S.92(15) British North America Act (1867). The provincial ancillary punishment power is more explicit then the Federal American ancillary punishment power, and by its limitation of punishment to fine, penalty or imprisonment, arguably, excludes the death penalty from its range.

According to news reports, the President of the United States proposes that Congress impose capital punishment for treason, spying, sabotage, hijacking and murder recidivism. Punishment for treason could be imposed by virtue of Congress's specific jurisdiction. Punishment for sabotage could, it is submitted, be imposed by virtue of Congress's property jurisdiction. Punishment for spying and hijacking could be imposed by virtue of Congress's ancillary jurisdiction. A law against hijacking could be ancillary to Congress's power to regulate Commerce with foreign nations and among the several states, Article 1, Section 8, Clause 3. Punishment for espionage could be ancillary to Congress's power to provide for the common defence and general welfare of the United States, Article 1, Section 8, Clause 1. Alternatively a law against espionage may be a rule respecting property belonging to the United States. Finally, a murder recidivism capital punishment law could only apply to the areas over which the United States has territorial jurisdiction.

David Matas

Part Three of the new Code classifies offenses into 8 categories for purposes of assessing and levying imprisonment and fines. It brings the present structure into line with current judgments as to the seriousness of various offenses and with the best opinions of penologists as the efficacy of specific penalties. In some instances, more stringent sanctions are provided. For example, sentences for arson are increased from 5 to 15 years. In other cases penalties are reduced. For example, impersonating a foreign official carries a three year sentence, as opposed to the 10 year term originally prescribed.

To reduce the possibility of unwarranted disparities in sentencing, the Code establishes criteria for the imposition of sentence. At the same time, it provides for parole supervision after all prison sentences, so that even hardened criminals who serve their full prison terms will receive supervision following their release.

There are certain crimes reflecting such a degree of hostility to society that a decent regard for the common welfare requires that a defendant convicted of those crimes be removed from free society. For this reason my proposed new Code provides mandatory minimum prison terms for trafficking in hard narcotics; it provides mandatory minimum prison terms for persons using dangerous weapons in the execution of a crime; and it provides mandatory minimum prison sentences for those convicted as leaders of organized crime.

The magnitude of the proposed revision of the Federal Criminal Code will require careful detailed consideration by the Congress. I have no doubt this will be time-consuming. There are, however, two provisions in the Code which I feel require immediate enactment. I have thus directed that provisions relating to the death penalty and to heroin trafficking also be transmitted as separate bills in order that the Congress may act more rapidly on these two measures.

Death Penalty

The sharp reduction in the application of the death penalty was a component of the more permissive attitude toward crime in the last decade.

I do not contend that the death penalty is a panacea that will cure crime. Crime is the product of a variety of different circumstances—sometimes social, sometimes psychological—but it is committed by human beings and at the point of commission it is the product of that individual's motivation. If the incentive not to commit crime is stronger than the incentive *to* commit it, then logic suggests that crime will be reduced. It is in part the entirely justified feeling of the prospective criminal that he will not suffer for his deed which, in the present circumstances, helps allow those deeds to take place.

Federal crimes are rarely "crimes of passion." Airplane hi-jacking is not done in a blind rage; it has to be carefully planned. The use of incendiary devices and bombs is not a crime of passion, nor is kidnapping; all these must be thought out in advance. At present those who plan these crimes do not have to include in their deliberations the possibility that they will be put to death for their deeds. I believe that in making their plans, they should have to consider the fact that if a death results from their crime, they too may die.

Under those conditions, I am confident that the death penalty can be a valuable deterrent. By making the death penalty available, we will provide Federal enforcement authorities with additional leverage to dissuade those individuals who may commit a Federal crime from taking the lives of others in the course of committing that crime.

Hard experience has taught us that with due regard for the rights of all—including the right to life itself—we must return to a greater concern with protecting those who might otherwise be the innocent victims of violent crime than with protecting those who have committed those crimes. The society which fails to recognize this as a reasonable ordering of its priorities must inevitably find itself, in time, at the mercy of criminals.

America was heading in that direction in the last decade, and I believe that we must not risk returning to it again. Accordingly, I am proposing the re-institution of the death penalty for war-related treason, sabotage, and espionage, and for all specifically enumerated crimes under Federal jurisdiction from which death results.

The Department of Justice has examined the constitutionality of the death penalty in the light of the Supreme Court's recent decision in *Furman v. Georgia*. It is the Department's opinion that *Furman* holds unconstitutional the imposition of the death penalty only insofar as it is applied arbitrarily and capriciously. I believe the best way to accommodate the reservations of the Court is to authorize the automatic imposition of the death penalty where it is warranted.

Under the proposal drafted by the Department of Justice, a hearing would be required after the trial for the purpose of determining the existence or nonexistence of certain rational standards which delineate aggravating factors or mitigating factors.

Among those mitigating factors which would preclude the imposition of a death sentence are the youth of the defendant, his or her mental capacity, or the fact that the crime was committed under duress. Aggravating factors include the creation of a grave risk of danger to the national security, or to the life of another person, or the killing of another person during the commission of one of a circumscribed list of serious offenses, such as treason, kidnapping, or aircraft piracy.

The hearing would be held before the judge who presided at the trial and before either the same jury or, if circumstances require, a jury specially impaneled. Imposition of the death penalty by the judge would be mandatory if the jury returns a special verdict finding the existence of one or more aggravating factors and the absence of any mitigating factor. The death sentence is *prohibited* if the jury finds the existence of one or more mitigating factors.

Current statutes containing the death penalty would be amended to eliminate the requirement for jury recommendation, thus limiting the imposition of the death penalty to cases in which the legislative guidelines for its imposition clearly require it, and eliminating arbitrary and capricious application of the death penalty which the Supreme Court has condemned in the *Furman* case.

Canadian Embassy

Ambassade du Canada
1746 Massachusetts Avenue, N.W.,
Washington, D.C. 20036.

March 21, 1973.

Dear Mr. Hofley,

Attached herewith, as you requested, is a copy of the Sixth in a Series of Presidential Messages to the Congress on the State of the Union, dated March 14, 1973, entitled "Law Enforcement and Drug Abuse Prevention". You will note that the section on Death Penalty is located on pages 264 and 265.

Yours sincerely,

Lorne Clark

L.S. Clark,
First Secretary.

Mr. B.C. Hofley,
Assistant Deputy Solicitor General,
House of Commons,
OTTAWA, Canada.

A Macleod (to note & P.H.)

without which we wouldn't have a real foundation. And if it is built, and we hope it will be, and we will continue to make progress, you can all take a lot of credit.

That is what I wanted to say to you.

Thank you.

NOTE: The President spoke at 4:20 p.m. in the State Dining Room at the White House.

Meeting With Customs Agents

The President's Informal Remarks on the Joseph Auguste Ricord Case During a Meeting With Vernon D. Acree, Commissioner of Customs, and Five Customs Agents. March 14, 1973

We just had a report in regard to these remarkable narcotics agents here, they are actually customs agents, I believe, working in the field of narcotics. We have all heard of the Ricord case, of Ricord, one of the big international smugglers, I understand.

What impressed me was the effect of his activities, what it really means in human, personal terms. For example, the number that was given to me was 15 tons of heroin that he had smuggled into the United States. That adds up to about 30,000 pounds. And I understand from one of the agents that each pound provides 37,000 doses, or shots, or what have you.

So we have here, as a result of the efforts of these men and their colleagues in the Bureau of Customs, the apprehension of an individual who was the head of a heroin ring that brought in nine billion doses of heroin. And when I think of what one can do, or several can do, in destroying the life of a person, I would say these men have saved many, many lives.

I have noted with interest that the judge, when he pronounced sentence at the end of this trial, said that actually when you consider that figure of nine billion doses of heroin, that what these men have done has really affected the lives of more than those, for example, who lost their lives in Vietnam.

So, this battle is important and we are having these men here, not because of just their own individual bravery and their competence and the rest, but to pay our respects to the hundreds of agents in the customs office and in our other enforcement areas in the battle against narcotics.

And now, I think they are all glad to know we are going to have stiffer penalties. We are going to have mandatory sentences. This individual received 20 years and our concern would be what happens to him after 2 years with a probation officer who feels perhaps he has had a record of good conduct while in prison. Any individual of this type, it seems to me, has to have a mandatory prison sentence for a period years, and I find no disagreement among the group here.

Thank you.

NOTE: The President spoke at 10:53 a.m. in his Oval Office at the White House during his meeting with Commissioner Acree and Agents Paul Boulad, Robert P. Nunnery, Albert W. Seeley, Richard J. Hopkins, and Gustave Fassler.

Joseph Auguste Ricord was arrested in Paraguay in March 1971 and was extradited to face trial in New York City on Federal charges of conspiring to smuggle narcotics. He was convicted on December 15, 1972.

LAW ENFORCEMENT AND DRUG ABUSE PREVENTION

See P. 264

Sixth in a Series of Presidential Messages to the Congress on the State of the Union. March 14, 1973

To the Congress of the United States:

This sixth message to the Congress on the State of the Union concerns our Federal system of criminal justice. It discusses both the progress we have made in improving that system and the additional steps we must take to consolidate our accomplishments and to further our efforts to achieve a safe, just, and law-abiding society.

In the period from 1960 to 1968 serious crime in the United States increased by 122 percent according to the FBI's Uniform Crime Index. The rate of increase accelerated each year until it reached a peak of 17 percent in 1968.

In 1968 one major public opinion poll showed that Americans considered lawlessness to be the top domestic problem facing the Nation. Another poll showed that four out of five Americans believed that "Law and order has broken down in this country." There was a very real fear that crime and violence were becoming a threat to the stability of our society.

The decade of the 1960s was characterized in many quarters by a growing sense of permissiveness in America—as well intentioned as it was poorly reasoned—in which many people were reluctant to take the steps necessary to control crime. It is no coincidence that within a few years' time, America experienced a crime wave that threatened to become uncontrollable.

This Administration came to office in 1969 with the conviction that the integrity of our free institutions demanded stronger and firmer crime control. I promised that the wave of crime would not be the wave of the future. An all-out attack was mounted against crime in the United States.

—The manpower of Federal enforcement and prosecution agencies was increased.

—New legislation was proposed and passed by the Congress to put teeth into Federal enforcement efforts against organized crime, drug trafficking, and crime in the District of Columbia.

—Federal financial aid to State and local criminal justice systems—a forerunner of revenue sharing—was greatly expanded through Administration budgeting and Congressional appropriations, reaching a total of $1.5 billion in the three fiscal years from 1970 through 1972.

These steps marked a clear departure from the philosophy which had come to dominate Federal crime fighting efforts, and which had brought America to record-breaking levels of lawlessness. Slowly, we began to bring America back. The effort has been long, slow, and difficult. In spite of the difficulties, we have made dramatic progress.

In the last four years the Department of Justice has obtained convictions against more than 2500 organized crime figures, including a number of bosses and under-bosses in major cities across the country. The pressure on the underworld is building constantly.

Today, the capital of the United States no longer bears the stigma of also being the Nation's crime capital. As a result of decisive reforms in the criminal justice system the serious crime rate has been cut in half in Washington, D.C. From a peak rate of more than 200 serious crimes per day reached during one month in 1969, the figure has been cut by more than half to 93 per day for the latest month of record in 1973. Felony prosecutions have increased from 2100 to 3800, and the time between arrest and trial for felonies has fallen from ten months to less than two.

Because of the combined efforts of Federal, State, and local agencies, the wave of serious crime in the United States is being brought under control. Latest figures from the FBI's Uniform Crime Index show that serious crime is increasing at the rate of only one percent a year—the lowest recorded rate since 1960. A majority of cities with over 100,000 population have an actual reduction in crime.

These statistics and these indices suggest that our anti-crime program is on the right track. They suggest that we are taking the right

measures. They prove that the only way to attack crime in America is the way crime attacks our people—without pity. Our program is based on this philosophy, and it is working.

Now we intend to maintain the momentum we have developed by taking additional steps to further improve law enforcement and to further protect the people of the United States.

Law Enforcement Special Revenue Sharing

Most crime in America does not fall under Federal jurisdiction. Those who serve in the front lines of the battle against crime are the State and local law enforcement authorities. State and local police are supported in turn by many other elements of the criminal justice system, including prosecuting and defending attorneys, judges, and probation and corrections officers. All these elements need assistance and some need dramatic reform, especially the prison systems.

While the Federal Government does not have full jurisdiction in the field of criminal law enforcement, it does have a broad, constitutional responsibility to insure domestic tranquility. I intend to meet that responsibility.

At my direction, the Law Enforcement Assistance Administration (LEAA) has greatly expanded its efforts to aid in the improvement of State and local criminal justice systems. In the last three years of the previous administration, Federal grants to State and local law enforcement authorities amounted to only $22 million. In the first three years of my Administration, this same assistance totaled more than $1.5 billion—more than 67 times as much. I consider this money to be an investment in justice and safety on our streets, an investment which has been yielding encouraging dividends.

But the job has not been completed. We must now act further to improve the Federal role in the granting of aid for criminal justice. Such improvement can come with the adoption of Special Revenue Sharing for law enforcement.

I believe the transition to Special Revenue Sharing for law enforcement will be a relatively easy one. Since its inception, the LEAA has given block grants which allow State and local authorities somewhat greater discretion than does the old-fashioned categorical grant system. But States and localities still lack both the flexibility and the clear authority they need in spending Federal monies to meet their law enforcement challenges.

Under my proposed legislation, block grants, technical assistance grants, manpower development grants, and aid for correctional institutions would be combined into one $680 million Special Revenue Sharing fund which would be distributed to States and local governments on a formula basis. This money could be used for improving any area of State and local criminal justice systems.

I have repeatedly expressed my conviction that decisions affecting those at State and local levels should be made to the fullest possible extent at State and local levels. This is the guiding principle behind revenue sharing. Experience has demonstrated the validity of this approach and I urge that it now be fully applied to the field of law enforcement and criminal justice.

THE CRIMINAL CODE REFORM ACT

The Federal criminal laws of the United States date back to 1790 and are based on statutes then pertinent to effective law enforcement. With the passage of new criminal laws, with the unfolding of new court decisions interpreting those laws, and with the development and growth of our Nation, many of the concepts still reflected in our criminal laws have become inadequate, clumsy, or outmoded.

In 1966, the Congress established the National Commission on Reform of the Federal Criminal Laws to analyze and evaluate the criminal Code. The Commission's final report of January 7, 1971, has been studied and further refined by the Department of Justice, working with the Congress. In some areas this Administration has substantial disagreements with the Commission's recommendations. But we agree fully with the almost universal recognition that modification of the Code is not merely desirable but absolutely imperative.

Accordingly, I will soon submit to the Congress the Criminal Code Reform Act aimed at a comprehensive revision of existing Federal criminal laws. This act will provide a rational, integrated code of Federal criminal law that is workable and responsive to the demands of a modern Nation.

The act is divided into three parts:

—1—general provisions and principles,

—2—definitions of Federal offenses, and

—3—provisions for sentencing.

Part 1 of the Code establishes general provisions and principles regarding such matters as Federal criminal jurisdiction, culpability, complicity, and legal defenses, and contains a number of significant innovations. Foremost among these is a more effective test for establishing Federal criminal jurisdiction. Those circumstances giving rise to Federal jurisdiction are clearly delineated in the proposed new Code and the extent of jurisdiction is clearly defined.

I am emphatically opposed to encroachment by Federal authorities on State sovereignty, by unnecessarily increasing the areas over which the Federal Government asserts jurisdiction. To the contrary, jurisdiction has been relinquished in those areas where the States have demonstrated no genuine need for assistance in protecting their citizens.

In those instances where jurisdiction is expanded, care has been taken to limit that expansion to areas of compelling Federal interest which are not adequately dealt with under present law. An example of such an instance would be the present law which states that it is a Federal crime to travel in interstate commerce to bribe a witness in a State court proceeding, but it is not a crime to travel in interstate commerce to threaten or intimidate the same witness, though intimidation might even take the form of murdering the witness.

The Federal interest is the same in each case—to assist the State in safeguarding the integrity of its judicial processes. In such a case, an extension of Federal jurisdiction is clearly warranted and is provided for under my proposal.

The rationalization of jurisdictional bases permits greater clarity of drafting, uniformity of interpretation, and the consolidation of numerous statutes presently applying to basically the same conduct.

For example, title 18 of the criminal Code as presently drawn, lists some 70 theft offenses—each written in a different fashion to cover the taking of various kinds of property in different jurisdictional situations. In the proposed new Code, these have been reduced to 5 general sections. Almost 80 forgery, counterfeiting, and related offenses have been replaced by only 3 sections. Over 50 statutes involving perjury and false statements have been reduced to 7 sections. Approximately 70 arson and property destruction offenses have been consolidated into 4 offenses.

Similar changes have been made in the Code's treatment of culpability. Instead of 79 undefined terms or combinations of terms presently found in title 18, the Code uses four clearly defined terms.

Another major innovation reflected in Part One is a codification of general defenses available to a defendant. This change permits clarification of areas in which the law is presently confused and, for the first time, provides uniform Federal standards for defense.

The most significant feature of this chapter is a codification of the "insanity" defense. At present the test is determined by the courts and varies across the country. The standard has become so vague in some instances that it has led to unconscionable abuse by defendants.

My proposed new formulation would provide an insanity defense only if the defendant did not know what he was doing. Under this formulation, which has considerable support in psychiatric and legal circles, the only question considered germane in a murder case, for example, would be whether the defendant knew that he was pulling the trigger of a gun. Questions such as the existence of a mental disease or defect and whether the defendant requires treatment or deserves imprisonment would be reserved for consideration at the time of sentencing.

Part Two of the Code consolidates the definitions of all Federal felonies, as well as certain related Federal offenses of a less serious character. Offenses and, in appropriate instances, specific defenses, are defined in simple, concise terms, and those existing provisions found to be obsolete or unusable have been eliminated—for example, operating a pirate ship on behalf of a "foreign prince," or detaining a United States carrier pigeon. Loopholes in existing law have been closed—for example, statutes concerning the theft of union funds, and new offenses have been created where necessary, as in the case of leaders of organized crime.

We have not indulged in changes merely for the sake of changes. Where existing law has proved satisfactory and where existing statutory language has received favorable interpretation by the courts, the law and the operative language have been retained. In other areas, such as pornography, there has been a thorough revision to reassert the Federal interest in protecting our citizens.

The reforms set forth in Parts One and Two of the Code would be of little practical consequence without a more realistic approach to those problems which arise in the post-conviction phase of dealing with Federal offenses.

For example, the penalty structure prescribed in the present criminal Code is riddled with inconsistencies and inadequacies. Title 18 alone provides 18 different terms of imprisonment and 14 different fines, often with no discernible relationship between the possible term of imprisonment and the possible levying of a fine.

Part Three of the new Code classifies offenses into 8 categories for purposes of assessing and levying imprisonment and fines. It brings the present structure into line with current judgments as to the seriousness of various offenses and with the best opinions of penologists as the efficacy of specific penalties. In some instances, more stringent sanctions are provided. For example, sentences for arson are increased from 5 to 15 years. In other cases penalties are reduced. For example, impersonating a foreign official carries a three year sentence, as opposed to the 10 year term originally prescribed.

To reduce the possibility of unwarranted disparities in sentencing, the Code establishes criteria for the imposition of sentence. At the same time, it provides for parole supervision after all prison sentences, so that even hardened criminals who serve their full prison terms will receive supervision following their release.

There are certain crimes reflecting such a degree of hostility to society that a decent regard for the common welfare requires that a defendant convicted of those crimes be removed from free society. For this reason my proposed new Code provides mandatory minimum prison terms for trafficking in hard narcotics; it provides mandatory minimum prison terms for persons using dangerous weapons in the execution of a crime; and it provides mandatory minimum prison sentences for those convicted as leaders of organized crime.

The magnitude of the proposed revision of the Federal Criminal Code will require careful detailed consideration by the Congress. I have no doubt this will be time-consuming. There are, however, two provisions in the Code which I feel require immediate enactment. I have thus directed that provisions relating to the death penalty and to heroin trafficking also be transmitted as separate bills in order that the Congress may act more rapidly on these two measures.

Death Penalty

The sharp reduction in the application of the death penalty was a component of the more permissive attitude toward crime in the last decade.

I do not contend that the death penalty is a panacea that will cure crime. Crime is the product of a variety of different circumstances—sometimes social, sometimes psychological—but it is committed by human beings and at the point of commission it is the product of that individual's motivation. If the incentive not to commit crime is stronger than the incentive *to* commit it, then logic suggests that crime will be reduced. It is in part the entirely justified feeling of the prospective criminal that he will not suffer for his deed which, in the present circumstances, helps allow those deeds to take place.

Federal crimes are rarely "crimes of passion." Airplane hi-jacking is not done in a blind rage; it has to be carefully planned. The use of incendiary devices and bombs is not a crime of passion, nor is kidnapping; all these must be thought out in advance. At present those who plan these crimes do not have to include in their deliberations the possibility that they will be put to death for their deeds. I believe that in making their plans, they should have to consider the fact that if a death results from their crime, they too may die.

Under those conditions, I am confident that the death penalty can be a valuable deterrent. By making the death penalty available, we will provide Federal enforcement authorities with additional leverage to dissuade those individuals who may commit a Federal crime from taking the lives of others in the course of committing that crime.

Hard experience has taught us that with due regard for the rights of all—including the right to life itself—we must return to a greater concern with protecting those who might otherwise be the innocent victims of violent crime than with protecting those who have committed those crimes. The society which fails to recognize this as a reasonable ordering of its priorities must inevitably find itself, in time, at the mercy of criminals.

America was heading in that direction in the last decade, and I believe that we must not risk returning to it again. Accordingly, I am proposing the re-institution of the death penalty for war-related treason, sabotage, and espionage, and for all specifically enumerated crimes under Federal jurisdiction from which death results.

The Department of Justice has examined the constitutionality of the death penalty in the light of the Supreme Court's recent decision in *Furman v. Georgia*. It is the Department's opinion that *Furman* holds unconstitutional the imposition of the death penalty only insofar as it is applied arbitrarily and capriciously. I believe the best way to accommodate the reservations of the Court is to authorize the automatic imposition of the death penalty where it is warranted.

Under the proposal drafted by the Department of Justice, a hearing would be required after the trial for the purpose of determining the existence or nonexistence of certain rational standards which delineate aggravating factors or mitigating factors.

Among those mitigating factors which would preclude the imposition of a death sentence are the youth of the defendant, his or her mental capacity, or the fact that the crime was committed under duress. Aggravating factors include the creation of a grave risk of danger to the national security, or to the life of another person, or the killing of another person during the commission of one of a circumscribed list of serious offenses, such as treason, kidnapping, or aircraft piracy.

The hearing would be held before the judge who presided at the trial and before either the same jury or, if circumstances require, a jury specially impaneled. Imposition of the death penalty by the judge would be mandatory if the jury returns a special verdict finding the existence of one or more aggravating factors and the absence of any mitigating factor. The death sentence is *prohibited* if the jury finds the existence of one or more mitigating factors.

Current statutes containing the death penalty would be amended to eliminate the requirement for jury recommendation, thus limiting the imposition of the death penalty to cases in which the legislative guidelines for its imposition clearly require it, and eliminating arbitrary and capricious application of the death penalty which the Supreme Court has condemned in the *Furman* case.

Drug Abuse

No single law enforcement problem has occupied more time, effort and money in the past four years than that of drug abuse and drug addiction. We have regarded drugs as "public enemy number one," destroying the most precious resource we have—our young people—and breeding lawlessness, violence and death.

When this Administration assumed office in 1969, only $82 million was budgeted by the Federal Government for law enforcement, prevention, and rehabilitation in the field of drug abuse.

Today that figure has been increased to $785 million for 1974—nearly 10 times as much. Narcotics production has been disrupted, more traffickers and distributors have been put out of business, and addicts and abusers have been treated and started on the road to rehabilitation.

Since last June, the supply of heroin on the East Coast has been substantially reduced. The scarcity of heroin in our big Eastern cities has driven up the price of an average "fix" from $4.31 to $9.88, encouraging more addicts to seek medical treatment. At the same time the heroin content of that fix has dropped from 6.5 to 3.7 percent.

Meanwhile, through my Cabinet Committee on International Narcotics Control, action plans are underway to help 59 foreign countries develop and carry out their own national control programs. These efforts, linked with those of the Bureau of Customs and the Bureau of Narcotics and Dangerous Drugs, have produced heartening results.

Our worldwide narcotics seizures almost tripled in 1972 over 1971. Seizures by our anti-narcotics allies abroad are at an all-time high.

In January, 1972, the French seized a half-ton of heroin on a shrimp boat headed for this country. Argentine, Brazilian and Venezuelan agents seized 285 pounds of heroin in three raids in 1972, and with twenty arrests crippled the existing French-Latin American connection. The ringleader was extradited to the U.S. by Paraguay and has just begun to serve a 20-year sentence in Federal prison.

Thailand's Special Narcotics Organization recently seized a total of almost eleven tons of opium along the Burmese border, as well as a half-ton of morphine and heroin.

Recently Iran scored the largest opium seizure on record—over 12 tons taken from smugglers along the Afghanistan border.

Turkey, as a result of a courageous decision by the government under Prime Minister Erim in 1971, has prohibited all cultivation of opium within her borders.

These results are all the more gratifying in light of the fact that heroin is wholly a foreign import to the United States. We do not grow opium here; we do not produce heroin here; yet we have the largest addict population in the world. Clearly we will end our problem faster with continued foreign assistance.

Our domestic accomplishments are keeping pace with international efforts and are producing equally encouraging results. Domestic drug seizures, including seizures of marijuana and hashish, almost doubled in 1972 over 1971. Arrests have risen by more than one-third and convictions have doubled.

In January of 1972, a new agency, the Office of Drug Abuse Law Enforcement (DALE), was created within the Department of Justice. Task forces composed of investigators, attorneys, and special prosecuting attorneys have been assigned to more than forty cities with heroin problems. DALE now arrests pushers at the rate of 550 a month and has obtained 750 convictions.

At my direction, the Internal Revenue Service (IRS) established a special unit to make intensive tax investigations of suspected domestic traffickers. To date, IRS has collected $18 million in currency and property, assessed tax penalties of more than $100 million, and obtained 25 convictions. This effort can be particularly effective in reaching the high level traffickers and financiers who never actually touch the heroin, but who profit from the misery of those who do.

The problem of drug abuse in America is not a law enforcement problem alone. Under my Administration, the Federal Government has pursued a balanced, comprehensive approach to ending this problem. Increased law enforcement efforts have been coupled with expanded treatment programs.

The Special Action Office for Drug Abuse Prevention was created to aid in preventing drug abuse before it begins and in rehabilitating those who have fallen victim to it.

In each year of my Administration, more Federal dollars have been spent on treatment, rehabilitation, prevention, and research in the field of drug abuse than has been budgeted for law enforcement in the drug field.

The Special Action Office for Drug Abuse Prevention is currently developing a special program of Treatment Alternatives to Street Crime (TASC) to break the vicious cycle of addiction, crime, arrest, bail, and more crime. Under the TASC program, arrestees who are scientifically identified as heroin-dependent may be assigned by judges to treatment programs as a condition for release on bail, or as a possible alternative to prosecution.

Federally funded treatment programs have increased from sixteen in January, 1969, to a current level of 400. In the last fiscal year, the Special Action Office created more facilities for treating drug addiction than the Federal Government had provided in all the previous fifty years.

Today, federally funded treatment is available for 100,000 addicts a year. We also have sufficient funds available to expand our facilities to treat 250,000 addicts if required.

Nationwide, in the last two years, the rate of new addiction to heroin registered its first decline since 1964. This is a particularly important trend because it is estimated that one addict "infects" six of his peers.

The trend in narcotic-related deaths is also clearly on its way down. My advisers report to me that virtually complete statistics show such fatalities declined approximately 6 percent in 1972 compared to 1971.

In spite of these accomplishments, however, it is still estimated that one-third to one-half of all individuals arrested for street crimes continue to be narcotics abusers and addicts. What this suggests is that in the area of enforcement we are still only holding our own, and we must increase the tools available to do the job.

The work of the Special Action Office for Drug Abuse Prevention has aided in smoothing the large expansion of Federal effort in the area of drug treatment and prevention. Now we must move to improve Federal action in the area of law enforcement.

Drug abuse treatment specialists have continuously emphasized in their discussions with me the need for strong, effective law enforcement to restrict the availability of drugs and to punish the pusher.

One area where I am convinced of the need for immediate action is that of jailing heroin pushers. Under the Bail Reform Act of 1966, a Federal judge is precluded from considering the danger to the community when setting bail for suspects arrested for selling heroin. The effect of this restriction is that many accused pushers are immediately released on bail and are thus given the opportunity to go out and create more misery, generate more violence, and commit more crimes while they are waiting to be tried for these same activities

In a study of 422 accused violators, the Bureau of Narcotics and Dangerous Drugs found that 71 percent were freed on bail for a period ranging from three months to more than one year between the time of arrest and the time of trial. Nearly 40 percent of the total were free for a period ranging from one-half year to more than one year. As for the major cases, those involving pushers accused of trafficking in large quantities of heroin, it was found that one-fourth were free for over three months to one-half year; one-fourth were free for one-half year to one year; and 16 percent remained free for over one year prior to their trial.

In most cases these individuals had criminal records. One-fifth had been convicted of a previous drug charge and a total of 64 percent had a record of prior felony arrests. The cost of obtaining such a pre-trial release in most cases was minimal; 19 percent of the total sample were freed on personal recognizance and only 23 percent were required to post bonds of $10,000 or more.

Sentencing practices have also been found to be inadequate in many cases. In a study of 955 narcotics drug violators who were arrested by the Bureau of Narcotics and Dangerous Drugs and convicted in the courts, a total of 27 percent received sentences other than imprisonment. Most of these individuals were placed on probation.

This situation is intolerable. I am therefore calling upon the Congress to promptly enact a new Heroin Trafficking Act.

The first part of my proposed legislation would increase the sentences for *heroin* and *morphine* offenses.

For a first offense of *trafficking* in less than four ounces of a mixture or substance containing heroin or morphine, it provides a mandatory sentence of not less than five years nor more than fifteen years. For a first offense of trafficking in four or more ounces, it provides a mandatory sentence of not less than ten years or for life.

For those with a prior felony narcotic conviction who are convicted of trafficking in less than four ounces, my proposed legislation provides a mandatory prison term of ten years to life imprisonment. For second offenders who are convicted of trafficking in *more* than four ounces, I am proposing a mandatory sentence of life imprisonment without parole.

While four ounces of a heroin mixture may seem a very small amount to use as the criterion for major penalties, that amount is actually worth

12–15,000 dollars and would supply about 180 addicts for a day. Anyone selling four or more ounces cannot be considered a small time operator.

For those who are convicted of *possessing* large amounts of heroin but cannot be convicted of trafficking, I am proposing a series of lesser penalties.

To be sure that judges actually apply these tough sentences, my legislation would provide that the mandatory minimum sentences cannot be suspended, nor probation granted.

The second portion of my proposed legislation would deny pre-trial release to those charged with trafficking in heroin or morphine unless the judicial officer finds that release will not pose a danger to the persons or property of others. It would also prohibit the release of anyone convicted of one of the above felonies who is awaiting sentencing or the results of an appeal.

These are very harsh measures, to be applied within very rigid guidelines and providing only a minimum of sentencing discretion to judges. But circumstances warrant such provisions. All the evidence shows that we are now doing a more effective job in the areas of enforcement and rehabilitation. In spite of this progress, however, we find an intolerably high level of street crime being committed by addicts. Part of the reason, I believe, lies in the court system which takes over after drug pushers have been apprehended. The courts are frequently little more than an escape hatch for those who are responsible for the menace of drugs.

Sometimes it seems that as fast as we bail water out of the boat through law enforcement and rehabilitation, it runs right back in through the holes in our judicial system. I intend to plug those holes. Until then, all the money we spend, all the enforcement we provide, and all the rehabilitation services we offer are not going to solve the drug problem in America.

Finally, I want to emphasize my continued opposition to legalizing the possession, sale or use of marijuana. There is no question about whether marijuana is dangerous, the only question is how dangerous. While the matter is still in dispute, the only responsible governmental approach is to prevent marijuana from being legalized. I intend, as I have said before, to do just that.

Conclusion

This Nation has fought hard and sacrificed greatly to achieve a lasting peace in the world. Peace in the world, however, must be accompanied by peace in our own land. Of what ultimate value is it to end the threat to our national safety in the world if our citizens face a constant threat to their personal safety in our own streets?

The American people are a law-abiding people. They have faith in the law. It is now time for Government to justify that faith by insuring that the law works, that our system of criminal justice works, and that "domestic tranquility" is preserved.

I believe we have gone a long way toward erasing the apprehensions of the last decade. But we must go further if we are to achieve that peace at home which will truly complement peace abroad.

In the coming months I will propose legislation aimed at curbing the manufacture and sale of cheap handguns commonly known as "Saturday

night specials," I will propose reforms of the Federal criminal system to provide speedier and more rational criminal trial procedures, and I will continue to press for innovation and improvement in our correctional systems.

The Federal Government cannot do everything. Indeed, it is prohibited from doing everything. But it can do a great deal. The crime legislation I will submit to the Congress can give us the tools we need to do all that we can do. This is sound, responsible legislation. I am confident that the approval of the American people for measures of the sort that I have suggested will be reflected in the actions of the Congress.

RICHARD NIXON

The White House,
March 14, 1973.

NOTE: For the President's radio address on law enforcement and drug abuse prevention, see page 246 of the Weekly Compilation of Presidential Documents.

Department of Commerce

Announcement of Intention To Nominate Betsy Ancker-Johnson To Be Assistant Secretary for Science and Technology. March 14, 1973

The President today announced his intention to nominate Betsy Ancker-Johnson, of Seattle, Wash., to be Assistant Secretary of Commerce for Science and Technology. She will succeed James H. Wakelin, Jr., who was Assistant Secretary for Science and Technology from February 22, 1971, until August 1, 1972.

Dr. Ancker-Johnson is currently academic/science adviser to the research and engineering group of the Boeing Co., in Seattle, Wash., and is head of advanced energy systems for Boeing's aerospace group. She has also been an affiliate professor of electrical engineering at the University of Washington since 1964.

From 1961 to 1971, she worked in Boeing's scientific research laboratory. She previously worked in research laboratories in Princeton, N.J., and Palo Alto, Calif., and during 1953–54 was a junior research physicist and lecturer in physics at the University of California at Berkeley.

Dr. Ancker-Johnson was born on April 27, 1929, in Seattle, Wash. She received her B.S. degree from Wellesley College in 1948 and her Ph. D. in physics from Tuebingen University in Germany. Dr. Ancker-Johnson is a member of the National Advisory Committee on Oceans and Atmosphere, a fellow of the American Physical Society and a senior member of the Institute of Electrical and Electronic Engineers.

She is married to Harold H. Johnson. They reside in Seattle, Wash.

National Action for Foster Children Week, 1973

Proclamation 4198. March 14, 1973

By the President of the United States of America
a Proclamation

In today's rapidly changing, highly mobile society, more children than ever find themselves temporarily, or even permanently, separated from their parents. Such children may carry lasting emotional scars unless they can be placed in a stable family environment where they can feel loved and secure.

In the past year alone, more than 300,000 American children were living in foster homes. It is gratifying that so many Americans are working to help foster children. They include not only professionals in the child welfare field but hundreds of volunteers—businessmen, church and community leaders, and members of civic groups—all dedicated to the principle that none of our children should be deprived or neglected.

In recognition of these efforts, I am asking the Nation to set aside a week during which we can assess the needs of foster children, encourage States and communities to plan activities which will help meet those needs, and renew our determination to assure foster children that we care about them and their well-being.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby designate the week of April 8 through April 14, 1973, as National Action for Foster Children Week, 1973.

I urge Governors and Mayors to join me in proclaiming this observance, and I earnestly call upon citizens everywhere to volunteer their talents, energies and compassion

147-586

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

'DM SM
SOL GEN

TO / À: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER,
CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	April 4, 1973

SUBJECT / OBJET: Capital Punishment

Further to my memorandum of March 20 last, I attach copy of President Nixon's Message to Congress of March 14 last in connection with the death penalty, and also copy of a memorandum prepared by Mr. Matas on the division of jurisdiction between Congress and the State Legislatures in the field of criminal law.

A. J. MacLeod.

Atts.

001815

Part Three of the new Code classifies offenses into 8 categories for purposes of assessing and levying imprisonment and fines. It brings the present structure into line with current judgments as to the seriousness of various offenses and with the best opinions of penologists as the efficacy of specific penalties. In some instances, more stringent sanctions are provided. For example, sentences for arson are increased from 5 to 15 years. In other cases penalties are reduced. For example, impersonating a foreign official carries a three year sentence, as opposed to the 10 year term originally prescribed.

To reduce the possibility of unwarranted disparities in sentencing, the Code establishes criteria for the imposition of sentence. At the same time, it provides for parole supervision after all prison sentences, so that even hardened criminals who serve their full prison terms will receive supervision following their release.

There are certain crimes reflecting such a degree of hostility to society that a decent regard for the common welfare requires that a defendant convicted of those crimes be removed from free society. For this reason my proposed new Code provides mandatory minimum prison terms for trafficking in hard narcotics; it provides mandatory minimum prison terms for persons using dangerous weapons in the execution of a crime; and it provides mandatory minimum prison sentences for those convicted as leaders of organized crime.

The magnitude of the proposed revision of the Federal Criminal Code will require careful detailed consideration by the Congress. I have no doubt this will be time-consuming. There are, however, two provisions in the Code which I feel require immediate enactment. I have thus directed that provisions relating to the death penalty and to heroin trafficking also be transmitted as separate bills in order that the Congress may act more rapidly on these two measures.

Death Penalty

The sharp reduction in the application of the death penalty was a component of the more permissive attitude toward crime in the last decade.

I do not contend that the death penalty is a panacea that will cure crime. Crime is the product of a variety of different circumstances—sometimes social, sometimes psychological—but it is committed by human beings and at the point of commission it is the product of that individual's motivation. If the incentive not to commit crime is stronger than the incentive *to* commit it, then logic suggests that crime will be reduced. It is in part the entirely justified feeling of the prospective criminal that he will not suffer for his deed which, in the present circumstances, helps allow those deeds to take place.

Federal crimes are rarely "crimes of passion." Airplane hi-jacking is not done in a blind rage; it has to be carefully planned. The use of incendiary devices and bombs is not a crime of passion, nor is kidnapping; all these must be thought out in advance. At present those who plan these crimes do not have to include in their deliberations the possibility that they will be put to death for their deeds. I believe that in making their plans, they should have to consider the fact that if a death results from their crime, they too may die.

Under those conditions, I am confident that the death penalty can be a valuable deterrent. By making the death penalty available, we will provide Federal enforcement authorities with additional leverage to dissuade those individuals who may commit a Federal crime from taking the lives of others in the course of committing that crime.

Hard experience has taught us that with due regard for the rights of all—including the right to life itself—we must return to a greater concern with protecting those who might otherwise be the innocent victims of violent crime than with protecting those who have committed those crimes. The society which fails to recognize this as a reasonable ordering of its priorities must inevitably find itself, in time, at the mercy of criminals.

America was heading in that direction in the last decade, and I believe that we must not risk returning to it again. Accordingly, I am proposing the re-institution of the death penalty for war-related treason, sabotage, and espionage, and for all specifically enumerated crimes under Federal jurisdiction from which death results.

The Department of Justice has examined the constitutionality of the death penalty in the light of the Supreme Court's recent decision in *Furman v. Georgia*. It is the Department's opinion that *Furman* holds unconstitutional the imposition of the death penalty only insofar as it is applied arbitrarily and capriciously. I believe the best way to accommodate the reservations of the Court is to authorize the automatic imposition of the death penalty where it is warranted.

Under the proposal drafted by the Department of Justice, a hearing would be required after the trial for the purpose of determining the existence or nonexistence of certain rational standards which delineate aggravating factors or mitigating factors.

Among those mitigating factors which would preclude the imposition of a death sentence are the youth of the defendant, his or her mental capacity, or the fact that the crime was committed under duress. Aggravating factors include the creation of a grave risk of danger to the national security, or to the life of another person, or the killing of another person during the commission of one of a circumscribed list of serious offenses, such as treason, kidnapping, or aircraft piracy.

The hearing would be held before the judge who presided at the trial and before either the same jury or, if circumstances require, a jury specially impaneled. Imposition of the death penalty by the judge would be mandatory if the jury returns a special verdict finding the existence of one or more aggravating factors and the absence of any mitigating factor. The death sentence is *prohibited* if the jury finds the existence of one or more mitigating factors.

Current statutes containing the death penalty would be amended to eliminate the requirement for jury recommendation, thus limiting the imposition of the death penalty to cases in which the legislative guidelines for its imposition clearly require it, and eliminating arbitrary and capricious application of the death penalty which the Supreme Court has condemned in the *Furman* case.

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: A.J. MacLEOD,
SPECIAL ADVISOR ON
CORRECTIONAL POLICIES

FROM / DE: DAVID MATAS,
SPECIAL ASSISTANT.

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 27, 1973

SUBJECT / OBJET

CAPITAL PUNISHMENT AND CRIMINAL LAW JURISDICTION

In Canada the criminal law power is given explicitly to the Federal Government, Section 91 (27) British North America Act. In the United States, the criminal law power is given explicitly to neither the Federal Government nor the States Governments. Since the States of the United States are given the residuary powers not otherwise allocated by the Constitution, American criminal law power resides in the States. Amendment 10 of the United States Constitution states that the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States.

The Canadian Constitution has no residuary power, but rather a comprehensive power in the FEderal Government for peace, order and good government of Canada, from which the Provincial powers are accepted. In the result, the residuum of powers goes to the Federal Government, rather than to the Provincial Governments. So, even if the criminal law power were not explicitly allocated to the Federal Government, but instead not mentioned at all in the British North America Act, it would nonetheless remain in the Federal Government.

Although the American Federal Government is not given the general criminal law jurisdiction, it has three sources of criminal law jurisdiction. It has jurisdiction over specific crimes; it has a territorial jurisdiction; and it has a co-efficient, elastic or ancillary jurisdiction.

Although the American Federal Government has jurisdiction to define and punish piracies and felonies committed on the high seas and offences against the law of nations, Article 1, Section 8, Clause 10, U.S. Constitution. It has jurisdiction to provide for the punishment of counterfeiting the securities and current coins of the United States, Article 1, Section 8, Clause 6. Congress has the power to declare the punishment of treason, Article 3, Section 3.

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Clause 2. In Canada there is no power to punish specific crimes allocated either to the Federal Government or to the Provinces.

The Congress is given power to make all needful rules and regulations respecting the territorial or other property belonging to the United States, Article 4, Section 3, Clause 2. It has exclusive jurisdiction over the District of Columbia and over all buildings purchased for the erection of forts, magazines, arsenals, dock yards and other individual buildings, Article 1, Section 8, Clause 17. The Parliament of Canada is given power to make provision for the administration, peace, order and good government of any territory not for the time being included in any province, Section 4, British North America Act (1871), 30-35, Vic. C. 28. It is also given exclusive jurisdiction to make laws about the public properties S.91(1A) British North America Act (1867). Since Parliament already has the criminal law power, its territorial and property power is not necessary to found a criminal jurisdiction.

Thirdly, Congress has power to make all laws necessary and proper for carrying into execution its other powers Article 1, Section 8, Clause 18. In Canada, the Provincial Legislatures are given the power to impose punishment, by fine, penalty or imprisonment, for enforcing any law of the province made in relation to any matter coming within the classes of subjects within the exclusive jurisdiction of the provinces, S.92(15) British North America Act (1867). The provincial ancillary punishment power is more explicit then the Federal American ancillary punishment power, and by its limitation of punishment to fine, penalty or imprisonment, arguably, excludes the death penalty from its range.

According to news reports, the President of the United States proposes that Congress impose capital punishment for treason, spying, sabotage, hijacking and murder recidivism. Punishment for treason could be imposed by virtue of Congress's specific jurisdiction. Punishment for sabotage could, it is submitted, be imposed by virtue of Congress's property jurisdiction. Punishment for spying and hijacking could be imposed by virtue of Congress's ancillary jurisdiction. A law against hijacking could be ancillary to Congress's power to regulate Commerce with foreign nations and among the several states, Article 1, Section 8, Clause 3. Punishment for espionage could be ancillary to Congress's power to provide for the common defence and general welfare of the United States, Article 1, Section 8, Clause 1. Alternatively a law against espionage may be a rule respecting property belonging to the United States. Finally, a murder recidivism capital punishment law could only apply to the areas over which the United States has territorial jurisdiction.

David Matas

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

UM SM
SOL GEN
APR 2 4 17 PM '73

TO / A: DEPUTY SOLICITOR GENERAL

FROM / DE: D.C.(IP)

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	April 2, 1973

SUBJECT / OBJET: Capital Punishment - Bill C-2

You have requested the views of this Service on the proposed Memorandum to Cabinet. It is my understanding that the Commissioner has forwarded previous memoranda on this topic and I would hope to avoid repetition here.

I believe that the major comment which should be made on behalf of the staff of this Service is that the elimination of temporary absence or day paroles without escort, during the minimum period, removes from convicted murderers one of the major motivating forces that currently exists.

Indeed, there is a distinct possibility that, if these opportunities are removed, there may well be an increased incidence of attempted escapes and violence on the part of convicted murderers.

To the best of my knowledge, I cannot recall a case where a convicted murderer has committed a violent offence while on temporary absence.

Is it not possible to delete the paragraph 8B section (d)(ii) and (e)(ii) and amend it to read "Any day parole authorized during the minimum period of custody as fixed by the Statute or imposed by the Trial Judge, would require the agreement of two-thirds of the members of the Board."

That would apply to both the cases of aggravated and non-aggravated murder.

J. Braithwaite

J. Braithwaite

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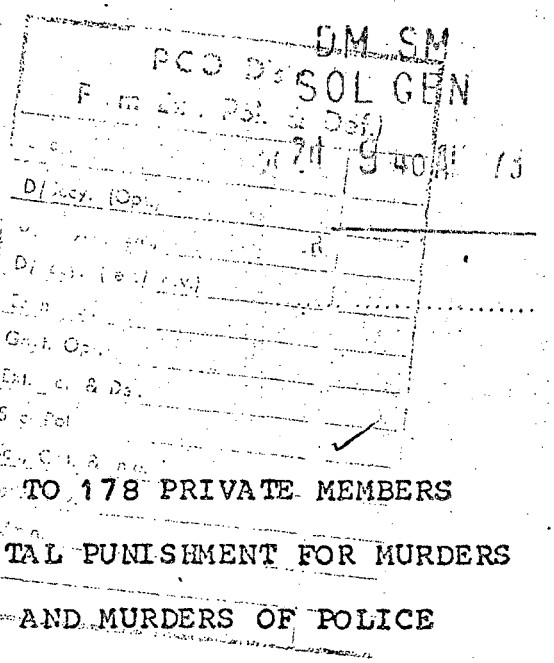

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FM LDN 1097 APR12/73

TO EXTOTT FLA

INFO JUSTICEOTT LAW REFORM COMMISSION

DISTR GEC FLP FLO

---RESTORATION OF CAPITAL PUNISHMENT

BRIT HSE OF COMMONS WED DEFEATED BY 320 TO 178 PRIVATE MEMBERS MOTION TO INTRODUCE BILL RESTORING CAPITAL PUNISHMENT FOR MURDERS INVOLVING USE OF FIREARMS OR EXPLOSIVES AND MURDERS OF POLICE OR PRISON OFFICERS.MOTION WAS INTRODUCED UNDER TEN MINUTE RULE WHICH PERMITTED ONLY SPONSOR CONSERVATIVE ED TAYLOR AND ONE OPP-ONENT,FORMER LABOUR HOME SECTY ROY JENKINS TO SPEAK BRIEFLY.EACH PRESENTED CASE EFFECTIVELY,LATTER MAKING MOST COMPREHENSIVE AND MOVING ARGUMENT AGAINST DEATH PENALTY WE HAVE ENCOUNTERED,BASED ON HIS EXPERIENCE AS MINISTER RESPONSIBLE PRIOR TO ABOLITION.TEXTS BY BAG.

2.ALTHOUGH ALL PARTIES PERMITTED MEMBERS FREE VOTE PM HEATH HAD LET IT BE KNOWN BEFOREHAND HE WOULD OPPOSE RESTORATION AND PRESENT HOME SECTY ROBERT CARR HAS REPEATEDLY STATED HE WOULD RESIGN IF DEATH PENALTY WERE REINTRODUCED.SEVEN OTHER CABINET MINISTERS JOINED THEM,TWO INCLUDING ONLY WOMAN MARGARET THATCHER SUPPORTED MOTION AND REMAINING FIVE DID NOT/NOT VOTE.OPPOSITION LEADER WILSON AND VIRTUALLY ALL LABOUR PARTY OPPOSED MOTION AS DID LIBERAL LEADER THORPE.CONSERVATIVE ENOCH POWELL,WHO HAD ARTICULATED RIGHT WING VIEWPOINT ON MANY OTHER ISSUES,IN THIS CASE NOT/NOT ONLY VOTED AGAINST RESTORATION BUT CONTRIBUTED ARTICLE TO DAILY TELEGRAPH THAT MORNING EXPLAINING WHY HE FOUND ARGUMENTS FOR CAPITAL PUNISHMENT UNCONVINCING.

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3.PUBLIC OPINION POLLS SHOW UP TO 8Ø PERCENT OF VOTERS FAVOUR RESTORATION OF DEATH PENALTY FOR ALL OR SOME MURDERS.THOSE CAMP-AIGNING FOR RESTORATION MAY THEREFORE ATTEMPT TO ENLIST SUPPORT AT CONSTITUENCY LEVEL AND AT CONSERVATIVE PARTY CONF THIS AUTUMN, BUT IT IS GENERALLY ASSUMED THAT THERE WILL BE NO/NO FURTHER ATTEMPTS AT LEGISLATION DURING LIFE OF THIS PARLIAMENT.

1 21 423Z 39Ø

MEMORANDUM

GOVERNMENT OF CANADA

NOTE DE SERVICE

GOUVERNEMENT DU CANADA

141-206

DM SOL GE
APR 2 4 18 M

FROM / DE
A. Therrien
Vice-Président
COMMISSION NATIONALE DES
LIBERATIONS CONDITIONNELLES

TO / À
R. Tassé
SOLLICITEUR GENERAL ADJOINT

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE — N/RÉFÉRENCE	
YOUR FILE — V/RÉFÉRENCE	
DATE	30 mars 1973

SUBJECT / SUJET Bill C-2 - Peine Capitale

Re votre memo du 27 mars demandant les commentaires de M. Street en rapport avec le Bill C-2 sur la peine capitale, M. Street est absent jusqu'au 16 avril et 6 autres membres de la Commission quittent Ottawa cette semaine pour conduire des panels à travers le pays. Je ne puis donc les consulter.

Quant à moi, ayant participé à l'élaboration de ce document, je n'ai pas de commentaires.

A. Therrien

15

001823

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

2 Sec

TO / À: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ: CONFIDENTIAL

OUR FILE - N/RÉFÉRENCE: SG - capital punishment.

YOUR FILE - V/RÉFÉRENCE:

DATE: March 27, 1973

SUBJECT / OBJET: Capital Punishment - Bill C-2

1. Attached is a copy of the letter that I am today sending to the Deputy Minister of Justice regarding the above.

2. Also attached is a copy of a memorandum prepared by the Special Adviser, Correctional Policy, with a copy of the material referred to therein, which deals with the questions you raised with me when we discussed the proposed Cabinet Memorandum on Capital Punishment.

RS

Roger Tassé

Enc. 2

C.C. FOR THE INFORMATION OF:

CONFIDENTIAL

SOLICITOR GENERAL

Mr. P. A. FAGUY)
MR. T. G. STREET) Any comments?

Ottawa, Ontario,
K1A 0P8

March 27, 1973

Dear Don:

Re: Capital Punishment - Bill C-2

The Solicitor General has requested that I make available to you a copy, which is attached, of a draft Memorandum to Cabinet regarding Bill C-2.

Your comments would be appreciated.

The Solicitor General has also indicated that he would appreciate it if he could get the benefit of your advice as to the question whether it would be acceptable to move amendments to Bill C-2 of the type proposed in the draft Memorandum.

An early reply would be appreciated.

Yours sincerely,

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

Roger Tassé,
Deputy Solicitor General

RT/ROP

Encl.

Mr. D. S. Thorson,
Deputy Minister of Justice,
Justice Building,
Kent and Wellington Streets,
Ottawa, Ontario

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ: CONFIDENTIAL

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 27, 1973

SUBJECT / OBJET: Capital Punishment - Bill C-2

1. Attached is a copy of the letter that I am today sending to the Deputy Minister of Justice regarding the above.

2. Also attached is a copy of a memorandum prepared by the Special Adviser, Correctional Policy, with a copy of the material referred to therein, which deals with the questions you raised with me when we discussed the proposed Cabinet Memorandum on Capital Punishment.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

RT/hl

Roger Tassé

Enc. 2

001826

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: A.J. MacLEOD, SPECIAL ADVISOR ON CORRECTIONAL POLICIES

FROM / DE: DAVID MATAS, SPECIAL ASSISTANT.

File Classer

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 27, 1973

SUBJECT / OBJET

CAPITAL PUNISHMENT AND CRIMINAL LAW JURISDICTION

In Canada the criminal law power is given explicitly to the Federal Government, Section 91 (27) British North America Act. In the United States, the criminal law power is given explicitly to neither the Federal Government nor the States Governments. Since the States of the United States are given the residuary powers not otherwise allocated by the Constitution, American criminal law power resides in the States. Amendment 10 of the United States Constitution states that the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States.

The Canadian Constitution has no residuary power, but rather a comprehensive power in the FEderal Government for peace, order and good government of Canada, from which the Provincial powers are accepted. In the result, the residuum of powers goes to the Federal Government, rather than to the Provincial Governments. So, even if the criminal law power were not explicitly allocated to the FEderal Government, but instead not mentioned at all in the British North America Act, it would nonetheless remain in the Federal Government.

Although the American Federal Government is not given the general criminal law jurisdiction, it has three sources of criminal law jurisdiction. It has jurisdiction over specific crimes; it has a territorial jurisdiction; and it has a co-efficient, elastic or ancillary jurisdiction.

Although the American Federal Government has jurisdiction to define and punish piracies and felonies committed on the high seas and offences against the law of nations, Article 1, Section 8, Clause 10, U.S. Constitution. It has jurisdiction to provide for the punishment of counterfeiting the securities and current coins of the United States, Article 1, Section 8, Clause 6. Congress has the power to declare the punishment of treason, Article 3, Section 3.

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CGSB STANDARD FORM 22d 7540-21-865-6699 FORMULE NORMALISÉE 22d DE L'ONGC

Clause 2. In Canada there is no power to punish specific crimes allocated either to the Federal Government or to the Provinces.

The Congress is given power to make all needful rules and regulations respecting the territorial or other property belonging to the United States, Article 4, Section 3, Clause 2. It has exclusive jurisdiction over the District of Columbia and over all buildings purchased for the erection of forts, magazines, arsenals, dock yards and other individual buildings, Article 1, Section 8, Clause 17. The Parliament of Canada is given power to make provision for the administration, peace, order and good government of any territory not for the time being included in any province, Section 4, British North America Act (1871), 30-35, Vic. C. 28. It is also given exclusive jurisdiction to make laws about the public properties S.91(1A) British North America Act (1867). Since Parliament already has the criminal law power, its territorial and property power is not necessary to found a criminal jurisdiction.

Thirdly, Congress has power to make all laws necessary and proper for carrying into execution its other powers Article 1, Section 8, Clause 18. In Canada, the Provincial Legislatures are given the power to impose punishment, by fine, penalty or imprisonment, for enforcing any law of the province made in relation to any matter coming within the classes of subjects within the exclusive jurisdiction of the provinces, S.92(15) British North America Act (1867). The provincial ancillary punishment power is more explicit then the Federal American ancillary punishment power, and by its limitation of punishment to fine, penalty or imprisonment, arguably, excludes the death penalty from its range.

According to news reports, the President of the United States proposes that Congress impose capital punishment for treason, spying, sabotage, hijacking and murder recidivism. Punishment for treason could be imposed by virtue of Congress's specific jurisdiction. Punishment for sabotage could, it is submitted, be imposed by virtue of Congress's property jurisdiction. Punishment for spying and hijacking could be imposed by virtue of Congress's ancillary jurisdiction. A law against hijacking could be ancillary to Congress's power to regulate Commerce with foreign nations and among the several states, Article 1, Section 8, Clause 3. Punishment for espionage could be ancillary to Congress's power to provide for the common defence and general welfare of the United States, Article 1, Section 8, Clause 1. Alternatively a law against espionage may be a rule respecting property belonging to the United States. Finally, a murder recidivism capital punishment law could only apply to the areas over which the United States has territorial jurisdiction.

David Matas

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: **THE SOLICITOR GENERAL**

FROM / DE: **DEPUTY SOLICITOR GENERAL**

SECURITY - CLASSIFICATION - DE SÉCURITÉ: **CONFIDENTIAL**

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: **March 26, 1973**

SUBJECT / OBJET: **Capital Punishment - Memorandum to Cabinet**

You asked me to examine the material at the bottom of page 4 of the Memorandum to Cabinet, to ascertain the necessity for it in view of the provisions of the Letters Patent and existing powers of the Governor in Council.

Firstly, I think it is desirable to specify that there would be no reference to the Governor in Council for approval of parole. As you know, until December 29, 1972, parole had to be approved by Cabinet in all cases where inmates were serving a commuted death sentence or a mandatory life sentence. Even with the lapse of that provision, the law now requires that, in the case of a commuted death sentence, where the instrument of commutation so specifies, Cabinet approval is required. Also, Bill C-2 in its present form would reinstate the 1967-1972 provision. Accordingly it seems desirable that the proposed omission of any such requirement should specifically be brought to attention.

Secondly, there is a need for a provision empowering the Governor in Council to reduce the minimum period of custody to a lesser term of years than that otherwise required by law. Such authorization would not deal with length of sentence, but only the conditions of the sentence, i.e. permit the convicted person to be granted parole or temporary absence. Neither the Criminal Code nor the Letters Patent now contain anything that would enable this to be done if the proposal for a minimum period of custody imposed by the trial judge were to be adopted. The Criminal Code (sections 683 and 684) deals only with the grant of a pardon and the commutation of death sentences, plus (section 685) the remission of pecuniary penalties, fines or forfeitures. The Letters Patent (section XII) cover the same matters, and also permit the Governor General to order a respite of

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CGSB STANDARD FORM 22d 7540-21-865-6699 FORMULE NORMALISÉE 22d DE L'ONGC

sentence. None of these powers is in point, since what is envisaged is not a pardon or a respite of sentence, but rather serving the sentence with the possibility of parole, or temporary absence from time to time, during what would otherwise be a period of continuous custody.

Attached are copies of section XII of the Letters Patent, and sections 683-686 of the Criminal Code, the last of these sections being included since it has the effect of preserving the powers under the royal prerogative no matter what amendments are made to other sections of the Code.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

Roger Tassé,
Deputy Solicitor General

Atts.

J.H. HOLLIES/mab

Grant of Pardons. Remission of Fines. Regulations of Power of Pardon

XII. And We do further authorize and empower Our Governor General, as he shall see occasion, in Our name and on Our behalf, when any crime or offence against the laws of Canada has been committed for which the offender may be tried thereunder, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further to grant to any offender convicted of any such crime or offence in any Court, or before any Judge, Justice, or Magistrate, administering the laws of Canada, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our Governor General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. And We do hereby direct and enjoin that Our Governor General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of Our Privy Council for Canada and, in other cases, the advice of one, at least, of his Ministers.

Power to issue Exequaturs

XIII. And We do further authorize and empower Our Governor General to issue Exequaturs, in Our name and on Our behalf, to Consular Officers of foreign countries to whom Commissions of Appointment have been issued by the Heads of States of such countries.

Governor General's absence

XIV. And whereas great prejudice may happen to Our Service and to the security of Canada by the absence of Our Governor General, he shall not quit Canada without having first obtained leave from Us for so doing through the Prime Minister of Canada.

Power reserved to His Majesty to revoke, alter or amend the present Letters Patent

XV. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us

Pardon

To whom pardon may be granted

683. (1) Her Majesty may extend the royal mercy to a person who is sentenced to imprisonment under the authority of an Act of the Parliament of Canada, even if the person is imprisoned for failure to pay money to another person.

Free or conditional pardon

(2) The Governor in Council may grant a free pardon or a conditional pardon to any person who has been convicted of an offence.

Effect of free pardon

(3) Where the Governor in Council grants a free pardon to a person, that person shall be deemed thereafter never to have committed the offence in respect of which the pardon is granted.

Punishment for subsequent offence not affected

(4) No free pardon or conditional pardon prevents or mitigates the punishment to which the person might otherwise be lawfully sentenced on a subsequent conviction for an offence other than that for which the pardon

Commutation of sentence

684. (1) The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two years.

Notice to authorities

(2) A copy of an instrument duly certified by the Clerk of the Privy Council or a writing under the hand of the Solicitor General of Canada or Deputy Solicitor General of Canada declaring that a sentence of death is commuted is sufficient notice to and authority for all persons having control over the prisoner to do all things necessary to give effect to the commutation.

'(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council.'

Remission by Governor in Council

685. (1) The Governor in Council may order the remission, in whole or in part, of a pecuniary penalty, fine or forfeiture imposed under an Act of the Parliament of Canada, whoever the person may be to whom it is payable or however it may be recoverable.

Terms of remission

(2) An order for remission under subsection (1) may include the remission of costs incurred in the proceedings, but no costs to which a private prosecutor is entitled shall be remitted. 1953-54, c. 51, s. 657.

Royal prerogative

686. Nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy. 1953-54, c. 51, s. 658.

CONFIDENTIAL

March 19, 1973

MEMORANDUM TO THE CABINET

Re: Capital Punishment - Bill C-2

PROBLEM

1. On January 25, 1973 the undersigned introduced Bill C-2, an Act to amend the Criminal Code with respect to persons convicted of murder. That bill would extend for five years the 1967 law on capital punishment which expired on December 29, 1972, and which limited the death penalty to the murder of a police or prison officer.

2. Bill C-2 is comparable to the 1967 law except that it substitutes the expressions "murder punishable by death" and "murder punishable by life imprisonment" for the expressions "capital" and "non-capital" murders. This change was made for purposes of clarity and precision.

3. Since the introduction of Bill C-2, concern has been expressed in Parliament and in the press about the increase in recent years in the number of murders. This seems to reflect a feeling that the 1967-72 law was not a sufficient deterrent to murderers. A related concern is the belief, even on the part of some abolitionists, that the rules and practices for the release of convicted murderers on temporary absence or parole are too lax. Some thirty-six members of Parliament have spoken in the debate. The main recommendations that they have made are set out very briefly in Appendix "A". Appendix "B" summarizes the law concerning the release on parole or temporary absence of inmates convicted of murders.

4. A majority of Canadians seem to think that capital punishment is necessary as a deterrent. It is probably correct to assume that the element of deterrence is considered by Canadians to be necessary to protect the public against persons who have already been convicted of murder and persons who, in the absence of appropriate deterrence, are potential murderers. In this context, the question to be resolved appears to be this: In relation to life sentences for murder, what conditions are reasonably necessary, in terms of deterrence, for the protection of the public while still leaving the offender with a reasonable hope of ultimately returning to society as a useful citizen?

OBJECTIVE

5. This memorandum seeks approval for the preparation of amendments to Bill C-2 that would provide for the total abolition of capital punishment and the substitution therefor of life imprisonment, subject to statutory conditions regarding the release of offenders on temporary absence or parole.

FACTORS

6. Amendments to the criminal law calculated to achieve the objective set out in paragraph 5 having regard to the current state of public opinion involve the application of some, if not all, of the following considerations:

a) The death penalty is not the most effective method of dealing with persons who are convicted of murder:

The advantage of the death penalty is that it punishes the offender and has deterrent value; how great a deterrent it is forms the basis of much of the current argument over capital punishment; it does not rehabilitate.

The argument for life imprisonment is that, depending upon the length of time to be spent in custody, it does punish; it has deterrent value, to a greater or lesser extent; it holds some promise of rehabilitating the offender.

b) The conditions and nature of the custody of persons convicted of the most serious types of murder should be more stringent than they are in less reprehensible cases:

The advantage would be that the law would continue to recotnize, in terms of punishment and deterrence, the distinctions that have previously existed between capital and non-capital murder.

c) The law should require a mandatory minimum sentence to be served in custody by an offender who is sentenced to life imprisonment for murder:

The argument for such sentences is that, in the eyes of the public, they have both punitive and deterrent value and are probably necessary if imprisonment is to be accepted as an alternative to the death sentence.

The argument against such sentences is that the longer the period of time (e.g. 20 years) than an offender is in custody, the less likely, as a rule, is the prison experience to be rehabilitative. A period of mandatory custody that leaves little or no hope may tend to lead the imprisoned man to one or more of the following courses: suicide, escape at any cost, including the lives of prison officers, trouble-making in the institution by way of fomenting disturbances to show his hatred of society, or withdrawal into a shell until he becomes, in effect, a vegetable. His marriage, if any, is not likely to last. Where, by reason of a long minimum sentence in custody, all reasonable hope of return to a useful life in the community is destroyed, the result is more likely to be torture than punishment.

d) The trial judge should have a function in fixing the minimum amount of time to be served in custody by an offender who is sentenced to life imprisonment for murder:

The advantage is that the judge, at the time of sentence, is aware of local public sentiment (in terms of punishment and deterrence), the circumstances of the offence, and some of the characteristics of the offender, presumably including his rehabilitative needs.

Some of the disadvantages are that, because in Canada there are several hundreds of judges who preside over murder trials, no two cases would be dealt with alike, and there could soon be a cry for "equal justice".

In addition, if this is a logical role for a judge in a murder trial, there would seem to be no reason for not extending that role to life sentences arising out of armed robbery, rape, kidnapping, hijacking and the like, where life sentences are not mandatory but are sometimes imposed.

e) Temporary absence or day parole without escort for an offender sentenced to life imprisonment for murder should be restricted during the minimum period that he is required to serve in custody:

The advantage of restrictions is that they would tend to satisfy the public that the punishment for murder is appropriately punitive and deterrent and that, for an extensive period of time, the public will be protected, as far as it is humanly possible to do so, from the offender.

The disadvantage of such a condition is that, for an extensive period of time, many rehabilitative programs involving the offender in the community could not be carried out.

f) In the most serious and reprehensible cases of murder, parole should be granted after the mandatory minimum period of custody, only with the unanimous approval of the full Parole Board:

The advantage of this is presumably that the public would be better satisfied that it is being protected than it would be in the case of a simple majority or two-thirds of the Board. Such a requirement would also add to the punitive and deterrent value of the life sentence for murder.

The disadvantage of requiring unanimity is that one or two members who might wish to dissent would, by agreeing, have to sacrifice their principles or, by dissenting, endure the hostility or disdain of the remaining members.

g) The Governor in Council should have authority under the law to reduce the mandatory minimum term of custody to a lesser term of years:

The advantage of making it possible for the Governor in Council to reduce the minimum period of custory is that it would enable the government, in proper cases involving the need for clemency, to alleviate the harshness of the law or the judge's judgment, having regard to all the circumstances of the case.

The disadvantage is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

COURSES OPEN TO THE GOVERNMENT

7. Among the courses open to the government would seem to be the following:

A. Let Bill C-2 continue, without government amendment, to decision by the House.

The danger of this is that, given the present mood of the House of Commons, the Bill might well be defeated which would leave the government in the difficult task of having to administer the pre-1967 law.

B. The undersigned proposes that Bill C-2 be amended to give effect to most of the factors set out in paragraph 6 above, in a manner that is likely to be supported by a majority of the House, as follows:

(a) there would be a total abolition of capital punishment for an indefinite period;

(b) "murder" would be defined as

(i) "aggravated murder" (the equivalent of "Capital murder" between 1961 and 1967), or

(ii) "non-aggravated murder" (the equivalent of non-capital murder between 1961 and 1967);
(see Appendix C for 1961-67 definitions);

(c) the sentence for both types of murder would be a life sentence;

(d) in the case of "aggravated murder" the following conditions would apply:

(i) the minimum period of custody set out in the Criminal Code would be ten years, but the trial judge would have authority, at the time of sentencing, to impose a further minimum period of custody of all or any part of an additional ten years;

(ii) no temporary absence or day parole, without escort, would be permitted during the minimum period, as fixed by the statute or imposed by the trial judge, as the case may be; and

(iii) no full parole would be authorized during the minimum period of custody, as fixed by the statute or imposed by the trial judge, and thereafter only if two-thirds of the members of the Parole Board agreed.

Explain why this is included. Deal with 6&9(3), better Patent.

There would be no reference to the Governor in Council for approval of parole but, in both types of murder, there would be authority in the Governor in Council to reduce the minimum period of custody to a lesser term of years than that required by law.

(e) "non-aggravated murder" would have these conditions:

(i) a life sentence in every case, with a minimum period of custody of ten years;

(ii) no temporary absence or day parole, without escort, to be permitted until 7 years had been served; and

(iii) no full parole during the minimum period of custody, but thereafter by a simple majority of the Board.

There would be no jurisdiction in the trial judge to set an additional minimum period of custody.

In addition to the principles set out above, the following would apply:

(a) an extension of the minimum period of custody and a determination that a murder is either aggravated or non-aggravated could be appealed to the court of appeal;

(b) the trial judge, if available, and the Chief Justice of the province must be consulted before a convicted murderer is released after the mandatory period of custody has expired.

8. These conditions are designed to strengthen the screening process for the release from custody of convicted murderers serving life sentences while jeopardizing, as little as possible, the rehabilitation programs of federal correctional services.

9. To accept the proposals described in paragraph "B" above raises questions as to the rules that should govern the release on temporary absence or parole of persons who have already been convicted of murders (see Appendix "C"). The new rules would be more restrictive than current rules in terms of years an inmate would be required to stay in custody and the granting of temporary absences and parole. It is suggested that these new rules should not have retroactive effect, and the present law should continue to apply to cases that have arisen or will arise prior to the coming into force of the proposed legislation.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

10. There would seem to be no obligation on the government to discuss the merits of any such proposed legislation with the provincial governments. There were no formal discussions with the provinces prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

11. The undersigned has consulted with the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

12. In the opinion of the undersigned, the proposals for amending Bill C-2 outlined above are likely to be preferred by a majority of Canadians to the scheme contained in Bill C-2.

CAUCUS CONSULTATION

13. There should be Caucus consultation after Cabinet has reached a tentative decision on the issues involved.

LIBERAL FEDERATION

14. Not applicable.

RECOMMENDATION

15. The undersigned recommends that Cabinet should instruct the Department of Justice to prepare whatever amendments to Bill C-2 that are necessary to implement paragraph 7(B) of this submission, and that the undersigned be authorized to move these amendments to Bill C-2 at an appropriate time when the Bill is under study by the Justice and Legal Affairs Committee.

Respectfully submitted,

Solicitor General

I concur

Minister of Justice

APPENDIX A

House of Commons Debate, as of March 6, 1973

Mr. Railton - he would abolish the death penalty completely and substitute for it imprisonment for complete life.

Mr. Fleming - he would require a 25-year minimum term of custody under the life sentence and categories of first and second degrees murder.

Mr. Woolliams - he wants some form of capital punishment for the planned, deliberate killing of ordinary citizens.

Mr. David MacDonald - he wants total abolition of the death penalty.

Mr. Diefenbaker - he would have a reference to the Supreme Court of Canada of the validity of the death penalty in the light of the Bill of Rights.

Mr. Reid - he would have a long sentence without parole.

Mr. Crouse - he would like to see imprisonment of the offender for his natural life.

Mr. Thomas - he would have the law remain as it is as of this date, i.e., the law as it existed between 1961 and 1967.

Mr. Guay - he would maintain the pre-1967 law for an experimental period of five years.

APPENDIX C

1961-67 Definitions of Murder

202A. (1) Murder is capital murder or non-capital murder.

(2) Murder is capital murder, in respect of any person, where

(a) it is planned and deliberate on the part of such person,

(b) it is within section 202 and such person

(i) by his own act caused or assisted in causing the bodily harm from which the death ensued,

(ii) by his own act administered or assisted in administering the stupefying or over-powering thing from which the death ensued,

(iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,

(iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or

(v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or

(c) such person by his own act caused or assisted in causing the death of

(i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or

(ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death.

(3) All murder other than capital murder is non-capital murder. 1960-61, c. 44, s. 1.

Usen

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / A: **THE SOLICITOR GENERAL**

Returned

FROM / DE: **DEPUTY SOLICITOR GENERAL**

WA.

SECURITY - CLASSIFICATION - DE SÉCURITÉ: **CONFIDENTIAL**

OUR FILE - N/REFERENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 26, 1973

SUBJECT / OBJET: Capital Punishment - Memorandum to Cabinet

You asked me to examine the material at the bottom of page 4 of the Memorandum to Cabinet, to ascertain the necessity for it in view of the provisions of the Letters Patent and existing powers of the Governor in Council.

Firstly, I think it is desirable to specify that there would be no reference to the Governor in Council for approval of parole. As you know, until December 29, 1972, parole had to be approved by Cabinet in all cases where inmates were serving a commuted death sentence or a mandatory life sentence. Even with the lapse of that provision, the law now requires that, in the case of a commuted death sentence, where the instrument of commutation so specifies, Cabinet approval is required. Also, Bill C-2 in its present form would reinstate the 1967-1972 provision. Accordingly it seems desirable that the proposed omission of any such requirement should specifically be brought to attention.

Secondly, there is a need for a provision empowering the Governor in Council to reduce the minimum period of custody to a lesser term of years than that otherwise required by law. Such authorization would not deal with length of sentence, but only the conditions of the sentence, i.e. permit the convicted person to be granted parole or temporary absence. Neither the Criminal Code nor the Letters Patent now contain anything that would enable this to be done if the proposal for a minimum period of custody imposed by the trial judge were to be adopted. The Criminal Code (sections 683 and 684) deals only with the grant of a pardon and the commutation of death sentences, plus (section 685) the remission of pecuniary penalties, fines or forfeitures. The Letters Patent (section XII) covers the same matters, and also permit the Governor General to order a respite of

Read WA
March 27/73

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* See note on page 4.

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sentence. None of these powers is in point, since what is envisaged is not a pardon or a respite of sentence, but rather serving the sentence with the possibility of parole, or temporary absence from time to time, during what would otherwise be a period of continuous custody.

Attached are copies of section XII of the Letters Patent, and sections 683-686 of the Criminal Code, the last of these sections being included since it has the effect of preserving the powers under the royal prerogative no matter what amendments are made to other sections of the Code.

Roger Tassé,
Deputy Solicitor General

Atts.

Grant of Pardons. Remission of Fines. Regulations of Power of Pardon

XII. And We do further authorize and empower Our Governor General, as he shall see occasion, in Our name and on Our behalf, when any crime or offence against the laws of Canada has been committed for which the offender may be tried thereunder, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further to grant to any offender convicted of any such crime or offence in any Court, or before any Judge, Justice, or Magistrate, administering the laws of Canada, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our Governor General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. And We do hereby direct and enjoin that Our Governor General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of Our Privy Council for Canada and, in other cases, the advice of one, at least, of his Ministers.

Power to issue Exequaturs

XIII. And We do further authorize and empower Our Governor General to issue Exequaturs, in Our name and on Our behalf, to Consular Officers of foreign countries to whom Commissions of Appointment have been issued by the Heads of States of such countries.

Governor General's absence

XIV. And whereas great prejudice may happen to Our Service and to the security of Canada by the absence of Our Governor General, he shall not quit Canada without having first obtained leave from Us for so doing through the Prime Minister of Canada.

Power reserved to His Majesty to revoke, alter or amend the present Letters Patent

XV. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us

Pardon

To whom pardon may be granted

683. (1) Her Majesty may extend the royal mercy to a person who is sentenced to imprisonment under the authority of an Act of the Parliament of Canada, even if the person is imprisoned for failure to pay money to another person.

Free or conditional pardon

(2) The Governor in Council may grant a free pardon or a conditional pardon to any person who has been convicted of an offence.

Effect of free pardon

(3) Where the Governor in Council grants a free pardon to a person, that person shall be deemed thereafter never to have committed the offence in respect of which the pardon is granted.

Punishment for subsequent offence not affected

(4) No free pardon or conditional pardon prevents or mitigates the punishment to which the person might otherwise be lawfully sentenced on a subsequent conviction for an offence other than that for which the pardon

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Commutation of sentence

684. (1) The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two years.

Notice to authorities

(2) A copy of an instrument duly certified by the Clerk of the Privy Council or a writing under the hand of the Solicitor General of Canada or Deputy Solicitor General of Canada declaring that a sentence of death is commuted is sufficient notice to and authority for all persons having control over the prisoner to do all things necessary to give effect to the commutation.

'(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council.'

Remission by Governor in Council

685. (1) The Governor in Council may order the remission, in whole or in part, of a pecuniary penalty, fine or forfeiture imposed under an Act of the Parliament of Canada, whoever the person may be to whom it is payable or however it may be recoverable.

Terms of remission

(2) An order for remission under subsection (1) may include the remission of costs incurred in the proceedings, but no costs to which a private prosecutor is entitled shall be remitted. 1953-54, c. 51, s. 657.

Royal prerogative

686. Nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy. 1953-54, c. 51, s. 658.

CONFIDENTIAL

March 19, 1973

MEMORANDUM TO THE CABINET

Re: Capital Punishment - Bill C-2

PROBLEM

1. On January 25, 1973 the undersigned introduced Bill C-2, an Act to amend the Criminal Code with respect to persons convicted of murder. That bill would extend for five years the 1967 law on capital punishment which expired on December 29, 1972, and which limited the death penalty to the murder of a police or prison officer.

2. Bill C-2 is comparable to the 1967 law except that it substitutes the expressions "murder punishable by death" and "murder punishable by life imprisonment" for the expressions "capital" and "non-capital" murders. This change was made for purposes of clarity and precision.

3. Since the introduction of Bill C-2, concern has been expressed in Parliament and in the press about the increase in recent years in the number of murders. This seems to reflect a feeling that the 1967-72 law was not a sufficient deterrent to murderers. A related concern is the belief, even on the part of some abolitionists, that the rules and practices for the release of convicted murderers on temporary absence or parole are too lax. Some thirty-six members of Parliament have spoken in the debate. The main recommendations that they have made are set out very briefly in Appendix "A". Appendix "B" summarizes the law concerning the release on parole or temporary absence of inmates convicted of murders.

4. A majority of Canadians seem to think that capital punishment is necessary as a deterrent. It is probably correct to assume that the element of deterrence is considered by Canadians to be necessary to protect the public against persons who have already been convicted of murder and persons who, in the absence of appropriate deterrence, are potential murderers. In this context, the question to be resolved appears to be this: In relation to life sentences for murder, what conditions are reasonably necessary, in terms of deterrence, for the protection of the public while still leaving the offender with a reasonable hope of ultimately returning to society as a useful citizen?

OBJECTIVE

5. This memorandum seeks approval for the preparation of amendments to Bill C-2 that would provide for the total abolition of capital punishment and the substitution therefor of life imprisonment, subject to statutory conditions regarding the release of offenders on temporary absence or parole.

FACTORS

6. Amendments to the criminal law calculated to achieve the objective set out in paragraph 5 having regard to the current state of public opinion involve the application of some, if not all, of the following considerations:

a) The death penalty is not the most effective method of dealing with persons who are convicted of murder:

The advantage of the death penalty is that it punishes the offender and has deterrent value; how great a deterrent it is forms the basis of much of the current argument over capital punishment; it does not rehabilitate.

The argument for life imprisonment is that, depending upon the length of time to be spent in custody, it does punish; it has deterrent value, to a greater or lesser extent; it holds some promise of rehabilitating the offender.

b) The conditions and nature of the custody of persons convicted of the most serious types of murder should be more stringent than they are in less reprehensible cases:

The advantage would be that the law would continue to recotnize, in terms of punishment and deterrence, the distinctions that have previously existed between capital and non-capital murder.

c) The law should require a mandatory minimum sentence to be served in custody by an offender who is sentenced to life imprisonment for murder:

The argument for such sentences is that, in the eyes of the public, they have both punitive and deterrent value and are probably necessary if imprisonment is to be accepted as an alternative to the death sentence.

The argument against such sentences is that the longer the period of time (e.g. 20 years) than an offender is in custody, the less likely, as a rule, is the prison experience to be rehabilitative. A period of mandatory custody that leaves little or no hope may tend to lead the imprisoned man to one or more of the following courses: suicide, escape at any cost, including the lives of prison officers, trouble-making in the institution by way of fomenting disturbances to show his hatred of society, or withdrawal into a shell until he becomes, in effect, a vegetable. His marriage, if any, is not likely to last. Where, by reason of a long minimum sentence in custody, all reasonable hope of return to a useful life in the community is destroyed, the result is more likely to be torture than punishment.

d) The trial judge should have a function in fixing the minimum amount of time to be served in custody by an offender who is sentenced to life imprisonment for murder:

The advantage is that the judge, at the time of sentence, is aware of local public sentiment (in terms of punishment and deterrence), the circumstances of the offence, and some of the characteristics of the offender, presumably including his rehabilitative needs.

Some of the disadvantages are that, because in Canada there are several hundreds of judges who preside over murder trials, no two cases would be dealt with alike, and there could soon be a cry for "equal justice".

In addition, if this is a logical role for a judge in a murder trial, there would seem to be no reason for not extending that role to life sentences arising out of armed robbery, rape, kidnapping, hijacking and the like, where life sentences are not mandatory but are sometimes imposed.

e) Temporary absence or day parole without escort for an offender sentenced to life imprisonment for murder should be restricted during the minimum period that he is required to serve in custody:

The advantage of restrictions is that they would tend to satisfy the public that the punishment for murder is appropriately punitive and deterrent and that, for an extensive period of time, the public will be protected, as far as it is humanly possible to do so, from the offender.

The disadvantage of such a condition is that, for an extensive period of time, many rehabilitative programs involving the offender in the community could not be carried out.

f) In the most serious and reprehensible cases of murder, parole should be granted after the mandatory minimum period of custody, only with the unanimous approval of the full Parole Board:

The advantage of this is presumably that the public would be better satisfied that it is being protected than it would be in the case of a simple majority or two-thirds of the Board. Such a requirement would also add to the punitive and deterrent value of the life sentence for murder.

The disadvantage of requiring unanimity is that one or two members who might wish to dissent would, by agreeing, have to sacrifice their principles or, by dissenting, endure the hostility or disdain of the remaining members.

g) The Governor in Council should have authority under the law to reduce the mandatory minimum term of custody to a lesser term of years:

The advantage of making it possible for the Governor in Council to reduce the minimum period of custory is that it would enable the government, in proper cases involving the need for clemency, to alleviate the harshness of the law or the judge's judgment, having regard to all the circumstances of the case.

The disadvantage is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

COURSES OPEN TO THE GOVERNMENT

7. Among the courses open to the government would seem to be the following:

A. Let Bill C-2 continue, without government amendment, to decision by the House.

The danger of this is that, given the present mood of the House of Commons, the Bill might well be defeated which would leave the government in the difficult task of having to administer the pre-1967 law.

B. The undersigned proposes that Bill C-2 be amended to give effect to most of the factors set out in paragraph 6 above, in a manner that is likely to be supported by a majority of the House, as follows:

(a) there would be a total abolition of capital punishment for an indefinite period;

(b) "murder" would be defined as

(i) "aggravated murder" (the equivalent of "Capital murder" between 1961 and 1967), or

(ii) "non-aggravated murder" (the equivalent of non-capital murder between 1961 and 1967);
(see Appendix C for 1961-67 definitions);

(c) the sentence for both types of murder would be a life sentence;

(d) in the case of "aggravated murder" the following conditions would apply:

(i) the minimum period of custody set out in the Criminal Code would be ten years, but the trial judge would have authority, at the time of sentencing, to impose a further minimum period of custody of all or any part of an additional ten years;

(ii) no temporary absence or day parole, without escort, would be permitted during the minimum period, as fixed by the statute or imposed by the trial judge, as the case may be; and

(iii) no full parole would be authorized during the minimum period of custody, as fixed by the statute or imposed by the trial judge, and thereafter only if two-thirds of the members of the Parole Board agreed.

Explain why this is included. Deal with 694(3), Letters Patent.

There would be no reference to the Governor in Council for approval of parole but, in both types of murder, there would be authority in the Governor in Council to reduce the minimum period of custody to a lesser term of years than that required by law.

Explain why this might be recess.

WA

(e) "non-aggravated murder" would have these conditions:

(i) a life sentence in every case, with a minimum period of custody of ten years;

(ii) no temporary absence or day parole, without escort, to be permitted until 7 years had been served; and

(iii) no full parole during the minimum period of custody, but thereafter by a simple majority of the Board.

There would be no jurisdiction in the trial judge to set an additional minimum period of custody.

In addition to the principles set out above, the following would apply:

(a) an extension of the minimum period of custody and a determination that a murder is either aggravated or non-aggravated could be appealed to the court of appeal;

(b) the trial judge, if available, and the Chief Justice of the province must be consulted before a convicted murderer is released after the mandatory period of custody has expired.

8. These conditions are designed to strengthen the screening process for the release from custody of convicted murderers serving life sentences while jeopardizing, as little as possible, the rehabilitation programs of federal correctional services.

9. To accept the proposals described in paragraph "B" above raises questions as to the rules that should govern the release on temporary absence or parole of persons who have already been convicted of murders (see Appendix "C"). The new rules would be more restrictive than current rules in terms of years an inmate would be required to stay in custody and the granting of temporary absences and parole. It is suggested that these new rules should not have retroactive effect, and the present law should continue to apply to cases that have arisen or will arise prior to the coming into force of the proposed legislation.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

10. There would seem to be no obligation on the government to discuss the merits of any such proposed legislation with the provincial governments. There were no formal discussions with the provinces prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

11. The undersigned has consulted with the Minister of Justice, who agrees with this memorandum.

PUBLIC RELATIONS CONSIDERATIONS

12. In the opinion of the undersigned, the proposals for amending Bill C-2 outlined above are likely to be preferred by a majority of Canadians to the scheme contained in Bill C-2.

CAUCUS CONSULTATION

13. There should be Caucus consultation after Cabinet has reached a tentative decision on the issues involved.

LIBERAL FEDERATION

14. Not applicable.

RECOMMENDATION

15. The undersigned recommends that Cabinet should instruct the Department of Justice to prepare whatever amendments to Bill C-2 that are necessary to implement paragraph 7(B) of this submission, and that the undersigned be authorized to move these amendments to Bill C-2 at an appropriate time when the Bill is under study by the Justice and Legal Affairs Committee.

Respectfully submitted,

Solicitor General

I concur

Minister of Justice

APPENDIX A

House of Commons Debate, as of March 6, 1973

Mr. Railton - he would abolish the death penalty completely and substitute for it imprisonment for complete life.

Mr. Fleming - he would require a 25-year minimum term of custody under the life sentence and categories of first and second degrees murder.

Mr. Woolliams - he wants some form of capital punishment for the planned, deliberate killing of ordinary citizens.

Mr. David MacDonald - he wants total abolition of the death penalty.

Mr. Diefenbaker - he would have a reference to the Supreme Court of Canada of the validity of the death penalty in the light of the Bill of Rights.

Mr. Reid - he would have a long sentence without parole.

Mr. Crouse - he would like to see imprisonment of the offender for his natural life.

Mr. Thomas - he would have the law remain as it is as of this date, i.e., the law as it existed between 1961 and 1967.

Mr. Guay - he would maintain the pre-1967 law for an experimental period of five years.

1961-67 Definitions of Murder

202A. (1) Murder is capital murder or non-capital murder.

(2) Murder is capital murder, in respect of any person, where

(a) it is planned and deliberate on the part of such person,

(b) it is within section 202 and such person

(i) by his own act caused or assisted in causing the bodily harm from which the death ensued,

(ii) by his own act administered or assisted in administering the stupefying or over-powering thing from which the death ensued,

(iii) by his own act stopped or assisted in the stopping of the breath from which the death ensued,

(iv) himself used or had upon his person the weapon as a consequence of which the death ensued, or

(v) counselled or procured another person to do any act mentioned in subparagraph (i), (ii) or (iii) or to use any weapon mentioned in subparagraph (iv), or

(c) such person by his own act caused or assisted in causing the death of

(i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or

(ii) a warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties,

or counselled or procured another person to do any act causing or assisting in causing the death.

(3) All murder other than capital murder is non-capital murder. 1960-61, c. 44, s. 1.

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 23, 1973

SUBJECT / OBJET: Capital Punishment - The U.S. President's Message to the Congress on the State of the Union, March 14, 1973

1. I attach a copy of the U.S. President's message to the Congress on the State of the Union, on March 14, 1973 which deals with law enforcement and drug abuse prevention.

2. I am especially drawing your attention to page 264 and following, where Mr. Nixon dealt with the question of death penalty.

RT/hl

Roger Tassé

Enc.

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MINISTRY SECRETARIAT - SECRÉTARIAT DU MINISTÈRE

Administration & Organization

~~CRIMINAL CODE~~ Acts & Legislation - Federal

~~CAPITAL PUNISHMENT~~ Criminal Code - Capital Punishment

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CROSS REFERENCE
RÉFÉRENCES CROISÉES

MINISTRY OF THE SOLICITOR GENERAL-MINISTÈRE DU SOLLICITEUR GÉNÉRAL

GENERAL ENTRIES
CIRCULATION DU DOSSIER

REFERRED TO DESTINATAIRE	PURPOSE OBJET	DATE	INIT.
M. Bourque		11/12/81	

B.F. AND P.A. ENTRIES
INSTRUCTIONS AU CLASSIER

DATE P.A. À CLASSER	INIT.	DATE B.F. À RENVOYER	CANC. B.F. RENV.-ANN.	INSP
10/12/82				

CLOSED

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