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FILE NO. – DOSSIER N° 1037-60-12 INACTIVE | VOLUME 6

SECRETARIAT
SECRÉTARIAT

ADMINISTRATION & ORGANIZATION

ACTS & LEGISLATION - FEDERAL

CRIMINAL CODE

CAPITAL PUNISHMENT

MS 35 (4-76)

TO - AU | FROM - DU

SECRET

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1037-60-12 INACTIVE (VOL. 6)

MS 30E (3-76)

CLOSED VOLUME

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Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: MR. B.C. HOFLEY,
ASSISTANT DEPUTY SOLICITOR GENERAL.

FROM / DE: MR. S.A. SHUSTER,
A/CHIEF, RESEARCH CENTRE.

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 22, 1973

SUBJECT / OBJET

As per your memorandum of March 12th, 1973, and attached material, I called Dr. McKie in relation to his offer to assist this Department in relation to the Capital PUnishment question. Dr. McKie appears to have impressive qualifications both in terms of his previous research on the subject and his experience in Correctional Institutions. During our discussion, Dr. MaKie offered to assist the Department in a number of ways.

a) Presentation of research material on the subject.

b) Willingness to provide expert opinion regarding alternatives to Capital Punishment and the implications of these alternatives both on the individual offender, the court and correctional systems and society in general.

In view of the above, I would recommend that this be brought to Mr. MacLeod's attention for possible follow-up.

S.A. Shuster.

SASHUSTER/js

Copy to: MCKIE R.L.

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,

L.S. Clark,
First Secretary.

Mr. B.C. Hofley,
Assistant Deputy Solicitor General,
House of Commons,
OTTAWA, Canada.

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

141-206

THE DEPUTY SOLICITOR GENERAL

File RoP
Classer

SPECIAL ADVISER,
CORRECTIONAL POLICY

March 20, 1973

Capital Punishment

Reference your memorandum herein of March 16 last concerning questions that the Minister has raised relating to the proposed Cabinet memorandum:

(a) Suicides

Mr. Shuster of the Correctional Research Branch has prepared the following memorandum in this connection:

Background

During the Fall of 1970, the Research Centre completed an analysis of suicides which had occurred in Canadian Penitentiaries during the period January 1st, 1959, to September 17th, 1970. As a result of the study, a large number of cross-tabulation tables were produced. In relation to the questions asked in Para. (a) and in view of the urgency of this matter, I have selected the attached tables which appear to be most pertinent for this analysis:

Table 1 - Type of Offence by Length of Aggregate Sentence

Table 2 - Time Served from Admission to Suicide by Time Remaining to Serve (if no paroles granted).

In addition, for comparative purposes, Table 3 represents a description of selected population characteristics of penitentiary males on register as of December 31, 1968, compiled by Statistics Canada as part of the penitentiary reporting system. It is important to note however that in comparing characteristics of suicides with data on inmates who were in Penitentiaries at any particular time,

..2

NUMBER AND PERCENTAGES OF SUICIDES BY MOST SERIOUS OFFENCE RELATED TO AGGREGATE SENTENCE OF INCARCERATION

AGGREGATE SENTENCE OF INCARCERATION (MONTHS)

Most Serious Offence	0-24 N	0-24 %	25-35 N	25-35 %	36-47 N	36-47 %	48-71 N	48-71 %	72-119 N	72-119 %	120-179 N	120-179 %	180-239 N	180-239 %	240-449 N	240-449 %	Life N	Life %	Death Comm. N	Death Comm. %	TOTAL N	TOTAL %
Homicides and Attempts			1	1.2	1	1.2	1	1.2			1	1.2	1	1.2	1	1.2	9	10.6	6	7.1	21	24.7
Rape and Attempts					1	1.2			1	1.2					1	1.2					3	3.5
Indecent Assault on female, male other sex offence			1	1.2	2	2.4	2	2.4													5	5.9
Assaults & woundings			1	1.2	1	1.2															2	2.4
Robbery	1	1.2	3	3.5			2	2.4	3	3.5	4	4.7	4	4.7	2	2.4					19	22.4
B. & E.			9	10.6	7	8.2	1	1.2													17	20.0
Escape			3	3.5																	3	3.5
Theft, Poss. Stolen Goods, Fraud	1	1.2	6	7.1	1	1.2															8	9.4
Drug Offences			2	2.4																	2	2.4
Other Crim. Code			2	2.4			2	2.4	1	1.2											5	5.9
TOTAL	2	2.4	28	32.9	13	15.3	8	9.4	5	5.9	5	5.9	5	5.9	4	4.7	9	10.6	6	7.1	85	100.0

Number and Percentage of Suicides by Time Served Since Admission Related to Time Remaining to Serve (if no paroles granted)

Time Remaining (months)

Time Served (months)	0 - 3		4 - 9		10 - 11		12 - 17		18 - 23		24 - 35		36-59		60 - 119		120-249		Life and Indet.		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
0							1	1.2			1	1.2	1	1.2	1	1.2	1	1.2			5	5.9
1-3							4	4.7	3	3.5	3	3.5	2	2.4					2	2.4	14	16.5
4-6					2	2.4	4	4.7	1	1.2									3	3.5	10	11.8
7 -9			3	3.5			2	2.4	1	1.2	3	3.5	1	1.2					1	1.2	11	12.9
10-11	1	1.2							1	1.2	1	1.2									3	3.5
12-23	2	2.4	3	3.5	1	1.2	3	3.5	2	2.4	2	2.4	3	3.5	2	2.4			2	2.4	20	23.5
24-35	1	1.2	1	1.2											1	1.2	2	2.4	1	1.2	6	7.1
36-59									1	1.2	1	1.2	1	1.2	1	1.2	1	1.2	2	2.4	7	8.2
60-119															1	1.2	2	2.4	4	4.7	7	8.2
120-124															1	1.2	1	1.2			2	2.4
Total	4	4.7	7	8.2	3	3.5	14	16.5	9	10.6	11	12.9	8	9.4	7	8.2	7	8.2	15	17.6	85	100.0

INSTITUTION: TOTAL MALES ON REGISTER

CODE:

REGION: CANADA

RESEARCH CENTRE

SELECTED POPULATION CHARACTERISTICS - TABLE "A"

as of DECEMBER 31, 1968

Population Characteristics															Total
	Murder	Attempted murder	Man-slaughter	Rape	Other Sexual	Wounding	Assaults	Robbery	Breaking & Entering	Prison Breach	Theft	Have stolen goods	Frauds	Prost. and Procuring	
No. in each offence group	329	47	215	143	217	107	76	1540	1653	276	570	301	493	20	
	4.8%	0.7%	3.2%	2.1%	3.2%	1.6%	1.1%	22.7%	24.3%	4.1%	8.4%	4.4%	7.3%	0.3%	
	Offensive Weapons	Other Crim. Code	Narcotic Cont. Act	Other Fed. Stats	Parole Violator	Habitual Criminal	Traffic Crim. Neg.								
	54	254	223	25	125	104	19								6791
	0.8%	3.7%	3.3%	0.4%	1.8%	1.5%	0.3%								
	- 2 yrs	2 & -3 yrs	3 & -4 yrs	4 & -5 yrs	5 & -6 yrs	6 & -10 yrs	10 & -15 yrs	15 & -20 yrs	20 & over	Commuted	Life	Prev. det.			
Term of sentence	394	2332	1248	522	628	570	418	105	83	97	273	121			
	5.8%	34.3%	18.4%	7.7%	9.2%	8.4%	6.2%	1.5%	1.2%	1.4%	4.0%	1.8%			6791
	-15	15	16	17	18	19	20-24	25-29	30-34	35-39	40-44	45-49	50-59	60 & over	
Age on admission		5	25	84	220	316	2000	1426	973	683	445	270	270	74	
		0.1%	0.4%	1.2%	3.2%	4.7%	29.5%	21%	14.3%	10.1%	6.6%	40%	40%	1.1%	6791
	-15	15	16	17	18	19	20-24	25-29	30-34	35-39	40-44	45-49	50-59	60 & over	
Present age		2	16	45	154	265	2134	1151	1024	732	515	310	351	92	
		0.03%	0.2%	0.7%	2.3%	3.9%	31.4%	16.9%	15.1%	10.8%	7.6%	4.6%	5.2%	1.4%	6791
	None	1	2	3	4	5	6-10	11-15	16-20	20 & over					
No of previous commitments	1261	999	918	820	690	516	1132	311	70	74					
	18.6%	14.7%	13.5%	12.1%	10.2%	7.6%	16.7%	4.6%	1.0%	1.1%					6791
	None	-3 mos	3 & -6 mos	6 mos & -1 yr	1 & -2 yrs	2 & -3 yrs	3 & -5 yrs	5 & -10 yrs	10 yrs & over						
Time served in inst. prior to present admission	1261	328	208	495	947	732	1048	1125	647						
	18.6%	4.8%	3.1%	7.3%	14%	10.8%	15.4%	16.6%	9.5%						6791
	First comm.	Gaol	Ref.	Pen.	Gaol & Ref.	Gaol & Pen.	Ref. & Pen.	Gaol, Ref & Pen.							
Previous inst. history	1261	1290	404	507	435	1718	390	786							
	18.6%	19%	5.9%	7.5%	6.4%	25.3%	5.7%	11.6%							6791

* Prepared by the Correctional Research Division from tables supplied by the Judicial Section, D.B.S.

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:

OUR FILE - N/RÉFÉRENCE: File Ref / Classer

YOUR FILE - V/RÉFÉRENCE:

DATE: March 20, 1973

SUBJECT / OBJET: Capital Punishment

With reference to your memorandum of today I attach a proposed Appendix "B" for the Cabinet memorandum herein.

I have no comments to make concerning the substance of the memorandum.

In paragraph 9. (line 4) the expression Appendix "C" should, I think, be Appendix "B".

There are several typographical errors that indicate the need for close proof-reading of the document.

Att.

A. J. MacLeod.

AJM:EGH

001351

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	March 20, 1973

SUBJECT / OBJET: Capital Punishment

Reference your memorandum herein of March 16 last concerning questions that the Minister has raised relating to the proposed Cabinet memorandum:

(a) Suicides

Mr. Shuster of the Correctional Research Branch has prepared the following memorandum in this connection:

Background

During the Fall of 1970, the Research Centre completed an analysis of suicides which had occurred in Canadian Penitentiaries during the period January 1st, 1959, to September 17th, 1970. As a result of the study, a large number of cross-tabulation tables were produced. In relation to the questions asked in Para. (a) and in view of the urgency of this matter, I have selected the attached tables which appear to be most pertinent for this analysis:

Table 1 - Type of Offence by Length of Aggregate Sentence

Table 2 - Time Served from Admission to Suicide by Time Remaining to Serve (if no paroles granted).

In addition, for comparative purposes, Table 3 represents a description of selected population characteristics of penitentiary males on register as of December 31, 1968, compiled by Statistics Canada as part of the penitentiary reporting system. It is important to note however that in comparing characteristics of suicides with data on inmates who were in Penitentiaries at any particular time,

..2

extreme caution should be exercised in making inferences from one set of data to the other. I have therefore provided the data on general population characteristics to indicate, in very general terms, whether there appear to be differences between the two populations (i.e. suicides and other Penitentiary inmates).

Analysis of Table 1

In relation to type of offence which resulted in the inmates being committed to a Penitentiary, Table 1 shows that 21 of the 85 suicides or 24.7% had been sentenced for an offence involving a homicide or an attempted homicide. This compares with 8.7% of the general inmate population (see Table 3). With respect to length of sentence 17.7% of the suicides were serving indeterminate sentences. Of these 10.6% were serving straight life sentences and a further 7.1% were serving life sentences as a result of having the death penalty commuted to life imprisonment. The comparative figures for the general inmate population are as follows:

Straight Life	4.0%
Death Commuted	1.4%
Total	5.4%

Table 1 also shows that 4.7% of the suicides had definite sentences of 20 years or more as compared with 1.2% of the general inmate population.

Analysis of Table 2

Table 2 shows that 50.6% of all suicides occur within the first year after admission to a Penitentiary and a further 23.5% within 2 years. This table also shows that 25.8% of suicides would have had 10 or more years remaining to serve, if no parole were granted (this statistic includes life sentences as well).

(b) Effect of Pre-1967 Murder Provisions ("aggravated murder")

A person who killed a hostage or kidnapped person or who killed someone by exploding a bomb on an aircraft would be guilty of capital murder under the pre-1967 (and immediately current) law, and accordingly of "aggravated murder" under the proposed amendments to Bill C-2, if it were proved that the murder was "planned and deliberate" (former section 202A).

A person who "hired a killer" to kill someone else would be a party to and guilty of the murder either as having abetted it (section 21(1)(c), or as having counselled or procured it (section 22).

If it could not be shown, in one or other of the four cases, that the killing was "planned and deliberate" it would be very difficult to bring any of the cases under the definition of what is called "constructive murder" or "murder in the commission of offences", because it would be necessary to show:

(a) that the offence in question was committed while the defendant was committing or attempting to commit one of the enumerated offences in section 213, i.e., treason, sabotage, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson;

(b) that he meant to cause bodily harm for the purpose of facilitating commission of the offence or facilitating his flight after committing or attempting to commit it, and the death ensued from the bodily harm; or that he administered a stupefying or overpowering thing or wilfully stopped the breath of a person for one of the preceding purposes; or he used a weapon in committing or fleeing from the offence or attempted commission of it and the death ensued as a consequence; and

(c) that the things mentioned in paragraph (b) above were done "by his own act" or that he counselled or procured the killing by one or other of the means mentioned.

There is no way in which hired killers or killers of hostages, persons kidnapped or passengers in aircraft could be, in effect, guaranteed conviction as "aggravated" murderers under the proposed amendments unless the law were further amended to provide, so to speak, that "aggravated murder" includes any murder, whether planned and deliberate or not, of a hostage, a person who has been kidnapped, a passenger on an airplane and a murder by a person who has been hired to commit it.

(c) Constitutional Division of Criminal Law Responsibility in the U.S.A.

Mr. David Matas has prepared the following on this issue:

In the United States, the 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 also has power to make all laws which are necessary and proper for carrying into execution the powers vested in it by the Constitution (Article 1, Section 8, Clause 18). The States are given all powers not delegated to the Federal Government by the Constitution and not expressly prohibited to the States (Amendment 10).

There is no express allocation of the criminal law power in the American Constitution. Since the residuary power is in the States it is the States that have the criminal law power. Except for the express provision about piracies, etc., the only federal criminal law power is the power to make those criminal laws that are necessary and proper to execute the powers otherwise granted.

In Canada the situation is the opposite. The criminal law power is expressly given to the Federal Government, by s. 91(27) of the British North America Act. Each Province is 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 any of the classes of subjects over which the Province is given jurisdiction (s.92(15) of the B.N.A. Act).

On the question concerning the U.S. proposals for the reinstatement of the death penalty for a number of federal crimes the situation is that Mr. Hofley has, for two days, been trying to find out from our counterparts in Washington what the situation is. They seem to be unavailable thus far. As soon as we can get "first-hand information" concerning these proposals we shall make the information available in a separate memorandum to you.

A. J. MacLeod.

AJM:EGM

NUMBER AND PERCENTAGES OF SUICIDES BY MOST SERIOUS OFFENCE RELATED TO AGGREGATE SENTENCE OF INCARCERATION

AGGREGATE SENTENCE OF INCARCERATION (MONTHS)

Most Serious Offence	0-24 N	0-24 %	25-35 N	25-35 %	36-47 N	36-47 %	48-71 N	48-71 %	72-119 N	72-119 %	120-179 N	120-179 %	180-239 N	180-239 %	240-449 N	240-449 %	Life N	Life %	Death Comm. N	Death Comm. %	TOTAL N	TOTAL %
Homicides and Attempts			1	1.2	1	1.2	1	1.2			1	1.2	1	1.2	1	1.2	9	10.6	6	7.1	21	24.7
Rape and Attempts					1	1.2			1	1.2					1	1.2					3	3.5
Indecent Assault on female, male other sex offence			1	1.2	2	2.4	2	2.4													5	5.9
Assaults & Woundings			1	1.2	1	1.2															2	2.4
Robbery	1	1.2	3	3.5			2	2.4	3	3.5	4	4.7	4	4.7	2	2.4					19	22.4
B. & E.			9	10.6	7	8.2	1	1.2													17	20.0
Escape			3	3.5																	3	3.5
Theft, Poss. Stolen Goods, Fraud	1	1.2	6	7.1	1	1.2															8	9.4
Drug Offences			2	2.4																	2	2.4
Other Crim. Code			2	2.4			2	2.4	1	1.2											5	5.9
TOTAL	2	2.4	28	32.9	13	15.3	8	9.4	5	5.9	5	5.9	5	5.9	4	4.7	9	10.6	6	7.1	85	100.0

Number and Percentage of Suicides by Time Served Since Admission Related to Time Remaining to Serve (if no paroles granted)

Time Remaining (months)

Time Served (months)	0 - 3		4 - 9		10 - 11		12 - 17		18 - 23		24 - 35		36-59		60 - 119		120-249		Life and Indet.		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
0							1	1.2			1	1.2	1	1.2	1	1.2	1	1.2			5	5.9
1-3							4	4.7	3	3.5	3	3.5	2	2.4					2	2.4	14	16.5
4-6					2	2.4	4	4.7	1	1.2									3	3.5	10	11.8
7 -9			3	3.5			2	2.4	1	1.2	3	3.5	1	1.2					1	1.2	11	12.9
10-11	1	1.2							1	1.2	1	1.2									3	3.5
12-23	2	2.4	3	3.5	1	1.2	3	3.5	2	2.4	2	2.4	3	3.5	2	2.4			2	2.4	20	23.5
24-35	1	1.2	1	1.2											1	1.2	2	2.4	1	1.2	6	7.1
36-59									1	1.2	1	1.2	1	1.2	1	1.2	1	1.2	2	2.4	7	8.2
60-119															1	1.2	2	2.4	4	4.7	7	8.2
120-124															1	1.2	1	1.2			2	2.4
Total	4	4.7	7	8.2	3	3.5	14	16.5	9	10.6	11	12.9	8	9.4	7	8.2	7	8.2	15	17.6	85	100.0

Table 3 RESEARCH CENTRE

INSTITUTION: TOTAL MALES ON REGISTER

CODE:

REGION: CANADA

SELECTED POPULATION CHARACTERISTICS - TABLE "A"

as of DECEMBER 31, 1968

Population Characteristics															Total
	Murder	Attempted murder	Man-slaughter	Rape	Other Sexual	Wounding	Assaults	Robbery	Breaking & Entering	Prison Breach	Theft	Have stolen goods	Frauds	Prost. and Procuring	
No. in each offence group	329	47	215	143	217	107	76	1540	1653	276	570	301	493	20	
	4.8%	0.7%	3.2%	2.1%	3.2%	1.6%	1.1%	22.7%	24.3%	4.1%	8.4%	4.4%	7.3%	0.3%	
	Offensive Weapons	Other Crim. Code	Narcotic Cont. Act	Other Fed. Stats	Parole Violator	Habitual Criminal	Traffic Crim. Neg.								
	54	254	223	25	125	104	19								
	0.8%	3.7%	3.3%	0.4%	1.8%	1.5%	0.3%								6791
	- 2 yrs	2 & -3 yrs	3 & -4 yrs	4 & -5yrs	5 & -6 yrs	6 & -10yrs	10 & -15 yrs	15 & -20 yrs	20 & over	Commuted	Life	Prev. det.			
Term of sentence	394	2332	1248	522	628	570	418	105	83	97	273	121			
	5.8%	34.3%	18.4%	7.7%	9.2%	8.4%	6.2%	1.5%	1.2%	1.4%	4.0%	1.8%			6791
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Age on admission		5	25	84	220	316	2000	1426	973	683	445	270	270	74	
		0.1%	0.4%	1.2%	3.2%	4.7%	29.5%	21%	14.3%	10.1%	6.6%	40%	40%	1.1%	6791
	-15	15	16	17	18	19	20-24	25-29	30-34	35-39	40-44	45-49	50-59	60 & over	
Present age		2	16	45	154	265	2134	1151	1024	732	515	310	351	92	
		0.03%	0.2%	0.7%	2.3%	3.9%	31.4%	16.9%	15.1%	10.8%	7.6%	4.6%	5.2%	1.4%	6791
	None	1	2	3	4	5	6-10	11-15	16-20	20 & over					
No of previous commitments	1261	999	918	820	690	516	1132	311	70	74					
	18.6%	14.7%	13.5%	12.1%	10.2%	7.6%	16.7%	4.6%	1.0%	1.1%					6791
	None	-3 mos	3 & -6 mos	6 mos & -1 yr	1 & -2 yrs	2 & -3 yrs	3 & -5 yrs	5 & -10 yrs	10 yrs & over						
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	18.6%	4.8%	3.1%	7.3%	14%	10.8%	15.4%	16.6%	9.5%						6791
	First comm.	Gaol	Ref.	Pen.	Gaol & Ref.	Gaol & Pen.	Ref. & Pen.	Gaol, Ref & Pen.							
[redacted] Inst. History	1261	1290	404	507	435	1718	390	786							
	18.6%	19%	5.9%	7.5%	6.4%	25.3%	5.7%	11.6%							6791

001358

* Prepared by the Correctional Research Division from tables supplied by the Judicial Section, D.B.S.

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

SECURITY - CLASSIFICATION - *DE SÉCURITÉ*	
OUR FILE – *N/RÉFÉRENCE*	
YOUR FILE – *V/RÉFÉRENCE*	
DATE	March 20, 1973

TO / *À*: THE DEPUTY SOLICITOR GENERAL

FROM / *DE*: SPECIAL ADVISER, CORRECTIONAL POLICY

SUBJECT / *OBJET*: Capital Punishment

With reference to your memorandum of today I attach a proposed Appendix "B" for the Cabinet memorandum herein.

I have no comments to make concerning the substance of the memorandum.

In paragraph 9. (line 4) the expression Appendix "C" should, I think, be Appendix "B".

There are several typographical errors that indicate the need for close proof-reading of the document.

A. J. MacLeod

Att. A. J. MacLeod.

001359

APPENDIX B

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."

Government Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	March 20, 1973

TO / À: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SUBJECT / OBJET: Capital Punishment - Bill of Rights

1. Some time ago you asked me to get in touch with the Department of Justice to ascertain their views on the suggestion made by the Right Honourable John Diefenbaker to the effect that the current provisions of the Criminal Code relating to capital punishment would be contrary to the Canadian Bill of Rights and that the matter should be referred to the Supreme Court of Canada for a decision.

2. I had, at the time, written to the Department of Justice and I have been informed during a telephone conversation a few days ago with the Assistant Deputy Minister of Justice (Don Christie) that his view is that, if the matter were placed before the Supreme Court of Canada, the Court would likely decide that there is no conflict between the Criminal Code provisions relating to capital punishment and the Canadian Bill of Rights. He doubts, in other words, that the reasoning followed by the Judges of the United States Supreme Court would have any application in Canada.

3. Mr. Christie referred me to a statement made recently by the Prime Minister of Canada on the suggestion made by Mr. Diefenbaker, and where the Prime Minister indicated that such a matter in a democratic society like ours should be decided by Parliament and not by the Courts.

4. In the circumstances, the question whether the suggestion made by Mr. Diefenbaker has validity does not need to be dealt with on its merits. In any event, I doubt that you would wish to express any firm views on this question as, certainly, this is a matter that the Court itself should be deciding were the matter to be placed before it by a person convicted of capital murder.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

Roger Tassé

RT/hl

c.c. Mr. J. McDonald

001361

Government Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: MR. A.J. MacLEOD, Q.C.

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: March 20, 1973

SUBJECT / OBJET: Capital Punishment

The attached Cabinet Memorandum on capital punishment has been revised after discussion with the Solicitor General. I would be pleased to have your comments. I would also appreciate it if you could prepare Appendix "B" which is a résumé of the law, including regulations under the Parole Act concerning the release on parole or temporary absence of inmates convicted of murders.

RT/hl

Roger Tassé

Enc.

001362

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: MR. ALLAN MacLEOD,
SPECIAL ADVISOR ON CORRECTIONAL POLICIES

FROM / DE: MR. DAVID MATAS
SPECIAL ASSISTANT

File Classer

SECURITY-CLASSIFICATION-DE SÉCURITÉ
OUR FILE – N/RÉFÉRENCE
YOUR FILE – V/RÉFÉRENCE
DATE: March 20, 1973

SUBJECT / OBJET: CRIMINAL LAW JURISDICTION IN THE UNITED STATES AND CANADA

In the United States, the 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 also has power to make all laws which are necessary and proper for carrying into execution the powers vested in it by the Constitution, Article 1, Section 8, Clause 18. The States are given all powers not delegated to the Federal Government by the Constitution and not expressly prohibited to the States, Amendment 10.

There is no express allocation of the criminal law power in the American Constitution. Since the residuary power is in the States it is the States that have the criminal law power. Except for the express provision about piracies, etc. the only federal criminal law power is the power to make those criminal laws that are necessary and proper to execute the powers otherwise granted.

In Canada the situation is the opposite. The criminal law power is expressly given to the Federal Government, by s.91(27) of the British North America Act. Each Province is 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 any of the classes subjects over which the Province is given jurisdiction, s.92(15).

The only differences between the American and the Canadian situation that prevent the Canadian situation from being the exact opposite of the American is, first, that the Canadian federal power is express rather than residuary. However, even if the federal criminal law power were not express, this power would remain in the federal government, since the

Copies to: 112-1
112-3

.... 2

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federal government has the residuary power under the British North America Act. Secondly, there is no specific criminal law power given by the Canadian Constitution for certain types of crimes to either the federal government or the provincial governments. Thirdly, the Canadian provincial imposition of punishment power is restricted to imposition of punishment by fine, penalty or imprisonment, so that capital punishment is not within the power of the province. The American power to do what is necessary and proper does not exclude by its terms the imposition of capital punishment.

David Matas.

c.c. B.C. Hofley.

Statistics Canada / Statistique Canada

March 20, 1973.

Copy: original handed over to J.- MacDonald K.

The Honourable Warren Allmand, M.P.,
Solicitor General,
Sir Wilfred Laurier Building,
340 Laurier Avenue West,
Ottawa, Ontario,
K1A 0P8.

Dear Sir:

Please find enclosed the tables which you have requested.

Since our 10 year murder statistics computer tape is being updated, certain data had to be added in by hand to the tables.

The following are the code breakdowns for Table 1:

Occupation of suspect:

01 - agriculture
02 - armed services, navy, air force
03 - clerical
04 - commercial
05 - communication
06 - construction
07 - electrical light and power production and stationary enginemen
08 - financial
09 - fishing, trapping, logging
10 - labourer
11 - managerial
12 - manufacturing and mechanical
13 - mining
14 - professional
15 - service: domestic
16 - service: personal
17 - service: protective
18 - service: other
19 - transportation
20 - housewife
21 - student
22 - retired or pensioner
00 - not stated or not known.

...2

The following are the code breakdowns for the disposition of the suspect sent to trial:

01 - unfit for trial
02 - acquitted - capital murder
03 - acquitted - non-capital murder
04 - acquitted - murder
05 - acquitted - manslaughter
06 - acquitted - other lesser offences
07 - acquitted - by reason of insanity
08 - convicted - capital murder and executed
09 - convicted - capital murder and commuted
10 - convicted - capital murder and sentenced to life imprisonment (under 18 years of age)
11 - convicted - capital murder and pending review
12 - convicted - non-capital murder
13 - convicted - murder
14 - convicted - manslaughter
15 - convicted - other lesser offences
16 - acquitted - capital murder - after change of law
17 - acquitted - non-capital murder - after change of law
18 - convicted - capital murder and executed - after change of law
19 - convicted - capital murder - after change of law
20 - convicted - capital murder and sentenced to life imprisonment (under 18) - after change of law
21 - convicted - capital murder and pending review
22 - convicted - non-capital murder - after change of law
23 - awaiting trial
24 - stay of proceedings
25 - final disposition not yet reported
26 - died before conviction or acquittal
27 - charge withdrawn during court procedure after preliminary hearing
00 - not known or not applicable.

These codes are to be considered jointly:

2 — 16
3 - 17
9 - 19
12 - 22
10 - 20
11 - 21
0 - 18

Please note that in Table 1, the suspects coded 00 under disposition of the suspect sent to trial are generally the accused who never progressed past the preliminary hearing stage.

Juveniles who were elevated to adult court for trial have also been tabulated.

Table 2 shows those suspects who were charged with capital murder and eventually had their charge reduced to non-capital murder.

...3

Should you require any further information about the tables, please contact Mrs. Teresa Bleszynski at 994-9333.

Yours sincerely,

K.A. Holt,
Assistant Director,
Judicial Division.

Encl.

141-2-86

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: MR. A. J. MacLEOD, Q.C.

FROM / DE: MR. S. A. SHUSTER

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE: Classer

YOUR FILE - V/RÉFÉRENCE:

DATE: March 19th, 1973

SUBJECT / OBJET: CAPITAL PUNISHMENT

This is further to our discussion of this morning in relation to Para. (a) of Mr. Tassé's memo dated March 16th, 1973.

Background:

During the Fall of 1970, the Research Centre completed an analysis of suicides which had occurred in Canadian Penitentiaries during the period January 1st, 1959 to September 17th, 1970. As a result of the study, a large number of cross-tabulation tables were produced. In relation to the questions asked in Para. (a) and in view of the urgency of this matter, I have selected the following two tables which appear to be most pertinent for this analysis.

Table 1 - Type of Offence by Length of Aggregate Sentence

Table 2 - Time Served from Admission to Suicide by Time Remaining to Serve (If No Paroles Granted).

In addition, for comparative purposes, Table 3 represents a description of selected population characteristics of penitentiary males on register as of December 31, 1968 compiled by Statistics Canada as part of the penitentiary reporting system. It is important to note however that in comparing characteristics of suicides with data on inmates who were in Penitentiaries at any particular time, extreme caution should be exercised in making inferences from one set of data to the other. I have therefore provided the data on general population characteristics to indicate, in very general terms, whether there appear to be differences between the two populations (i.e. suicides and other Penitentiary inmates).

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Analysis of Table 1

In relation to type of offence which resulted in the inmates being committed to a Penitentiary, Table 1 shows that 21 of the 85 suicides or 24.7% had been sentenced for an offence involving a homicide or an attempted homicide. This compares with 8.7% of the general inmate population (see Table 3). With respect to length of sentence 17.7% of the suicides were serving indeterminate sentences. Of these 10.6% were serving straight life sentences and a further 7.1% were serving life sentences as a result of having the death penalty commuted to life imprisonment. The comparative figures for the general inmate population are as follows:

Straight Life	4.0%
Death Commuted	1.4%
TOTAL	5.4%

Table 1 also shows that 4.7% of the suicides had definite sentences of 20 years or more as compared with 1.2% of the general inmate population.

Analysis of Table 2

Table 2 shows that 50.6% of all suicides occur within the first year after admission to a Penitentiary and a further 23.5% within 2 years. This table also shows that 25.8% of suicides would have had 10 or more years remaining to serve, if no parole were granted (this statistic includes life sentences as well).

I trust that this information will be of assistance to you.

S.A. SHUSTER

S. A. SHUSTER

ENCLS.

SAS/trl

Table 1

NUMBER AND PERCENTAGES OF SUICIDES BY MOST SERIOUS OFFENCE RELATED TO AGGREGATE SENTENCE OF INCARCERATION

Most Serious Offence	AGGREGATE SENTENCE OF INCARCERATION (MONTHS)																				TOTAL	
	0-24		25-35		36-47		48-71		72-119		120-179		180-239		240-449		Life		Death Comm.			
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Homicides and Attempts			1	1.2	1	1.2	1	1.2			1	1.2	1	1.2	1	1.2	9	10.6	6	7.1	21	24.7
Rape and Attempts					1	1.2			1	1.2					1	1.2					3	3.5
Indecent Assault on female, male other sex offence			1	1.2	2	2.4	2	2.4													5	5.9
Assaults & woundings			1	1.2	1	1.2															2	2.4
Robbery	1	1.2	3	3.5			2	2.4	3	3.5	4	4.7	4	4.7	2	2.4					19	22.4
B. & E.			9	10.6	7	8.2	1	1.2													17	20.0
Escape			3	3.5																	3	3.5
Theft, Poss. Stolen Goods, Fraud	1	1.2	6	7.1	1	1.2															8	9.4
Drug Offences			2	2.4																	2	2.4
Other Crim. Code			2	2.4			2	2.4	1	1.2											5	5.9
TOTAL	2	2.4	28	32.9	13	15.3	8	9.4	5	5.9	5	5.9	5	5.9	4	4.7	9	10.6	6	7.1	85	100.0

Table 2 RESEARCH CENTRE

Number and Percentage of Suicides by Time Served Since Admission Related to Time Remaining to Serve (if no paroles granted)

Time Remaining (months)

Time Served (months)	0 - 3		4 - 9		10 - 11		12 - 17		18 - 23		24 - 35		36-59		60 - 119		120-249		Life and Indet.		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
0							1	1.2			1	1.2	1	1.2	1	1.2	1	1.2			5	5.9
1-3							4	4.7	3	3.5	3	3.5	2	2.4					2	2.4	14	16.5
4-6					2	2.4	4	4.7	1	1.2									3	3.5	10	11.8
7 -9			3	3.5			2	2.4	1	1.2	3	3.5	1	1.2					1	1.2	11	12.9
10-11	1	1.2							1	1.2	1	1.2									3	3.5
12-23	2	2.4	3	3.5	1	1.2	3	3.5	2	2.4	2	2.4	3	3.5	2	2.4			2	2.4	20	23.5
24-35	1	1.2	1	1.2											1	1.2	2	2.4	1	1.2	6	7.1
36-59									1	1.2	1	1.2	1	1.2	1	1.2	1	1.2	2	2.4	7	8.2
60-119															1	1.2	2	2.4	4	4.7	7	8.2
120-124															1	1.2	1	1.2			2	2.4
Total	4	4.7	7	8.2	3	3.5	14	16.5	9	10.6	11	12.9	8	9.4	7	8.2	7	8.2	15	17.6	85	100.0

Table 3 RESEARCH CENTRE

INSTITUTION: TOTAL MALES ON REGISTER

CODE:

REGION: CANADA

SELECTED POPULATION CHARACTERISTICS - TABLE "A"

as of DECEMBER 31, 1968

Population Characteristics															Total
	Murder	Attempted murder	Man-slaughter	Rape	Other Sexual	Wounding	Assaults	Robbery	Breaking & Entering	Prison Breach	Theft	Have stolen goods	Frauds	Prost. and Procuring	
No. in each offence group	329	47	215	143	217	107	76	1540	1653	276	570	301	493	20	
	4.8%	0.7%	3.2%	2.1%	3.2%	1.6%	1.1%	22.7%	24.3%	4.1%	8.4%	4.4%	7.3%	0.3%	
	Offensive Weapons	Other Crim. Code	Narcotic Cont. Act	Other Fed. Stats	Parole Violator	Habitual Criminal	Traffic Crim. Neg.								
	54	254	223	25	125	104	19								
	0.8%	3.7%	3.3%	0.4%	1.8%	1.5%	0.3%								6791
	- 2 yrs	2 & -3 yrs	3 & -4 yrs	4 & -5yrs	5 & -6 yrs	6 & -10yrs	10 & -15 yrs	15 & -20 yrs	20 & over	Commuted	Life	Prev. det.			
Term of sentence	394	2332	1248	522	628	570	418	105	83	97	273	121			
	5.8%	34.3%	18.4%	7.7%	9.2%	8.4%	6.2%	1.5%	1.2%	1.4%	4.0%	1.8%			6791
	-15	15	16	17	18	19	20-24	25-29	30-34	35-39	40-44	45-49	50-59	60 & over	
Age on admission		5	25	84	220	316	2000	1426	973	683	445	270	270	74	
		0.1%	0.4%	1.2%	3.2%	4.7%	29.5%	21%	14.3%	10.1%	6.6%	40%	40%	1.1%	6791
	-15	15	16	17	18	19	20-24	25-29	30-34	35-39	40-44	45-49	50-59	60 & over	
Present age		2	16	45	154	265	2134	1151	1024	732	515	310	351	92	
		0.03%	0.2%	0.7%	2.3%	3.9%	31.4%	16.9%	15.1%	10.8%	7.6%	4.6%	5.2%	1.4%	6791
	None	1	2	3	4	5	6-10	11-15	16-20	20 & over					
No of previous commitments	1261	999	918	820	690	516	1132	311	70	74					
	18.6%	14.7%	13.5%	12.1%	10.2%	7.6%	16.7%	4.6%	1.0%	1.1%					6791
	None	-3 mos	3 & -6 mos	6 mos & -1 yr	1 & -2 yrs	2 & -3 yrs	3 & -5 yrs	5 & -10 yrs	10 yrs & over						
Time served in inst. prior to present admission	1261	328	208	495	947	732	1048	1125	647						
	18.6%	4.8%	3.1%	7.3%	14%	10.8%	15.4%	16.6%	9.5%						6791
	First comm.	Gaol	Ref.	Pen.	Gaol & Ref.	Gaol & Pen.	Ref. & Pen.	Gaol, Ref & Pen.							
Previous inst. history	1261	1290	404	507	435	1718	390	786							
	18.6%	19%	5.9%	7.5%	6.4%	25.3%	5.7%	11.6%							6791

* Prepared by the Correctional Research Division from tables supplied by the Judicial Section, D.B.S.

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

URGENT

SECURITY CLASSIFICATION DE SÉCURITÉ

OUR FILE N/RÉFÉRENCE

YOUR FILE V/RÉFÉRENCE

DATE March 16, 1973

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

FROM DE DEPUTY SOLICITOR GENERAL

SUBJECT OBJET Capital Punishment

The Minister has read your draft Cabinet Memorandum on capital punishment and he has raised the following questions:

(a) The suggestion is made that to increase the mandatory period of confinement for lifers would result in a greater rate of suicides. He would like to know whether there is any empirical evidence that this would be so. Is there any evidence, for example, that the rate of suicides in institutions is higher with lifers than it is with other categories of inmates? The Penitentiary Service might have some useful information in that respect. I seem to recall Mr. Faguy stating that suicides usually take place in the first months or years that follow the sentencing. It would be interesting to see whatever data we have on this question.

(b) He would like to have a clear understanding as to the effect of the provisions of the Code before 1967, if these provisions are to be incorporated in a modified Bill C-2. He is especially anxious to know whether the conditions set out in the paragraphs and sub-paragraphs that make up subsection 214(2) of the Criminal Code, are cumulative or whether it is sufficient that any one of the conditions set out in the paragraphs or sub-paragraphs be present for a murder to be a capital murder. In addition, the Solicitor General would like to know whether the killing of a hostage, the placing of a bomb on an aircraft or other place resulting in the death of a person, the killing of a kidnapped person, or the deliberate killing of a person by a murderer hired for that purpose, would be covered by the proposed definition of "aggravated murder".

(c) The Solicitor General would like to know more about the U.S. proposals for the reinstatement of the death penalty for a number of federal crimes. We have all read in the papers about Mr. Nixon's statement to the press regarding the death penalty but we should get first-hand information about these proposals from Washington. The Solicitor General would also like to know more about the constitutional division of responsibilities in the United States on this question between the federal government and the State government.

It would be appreciated if you would look into these questions and prepare an appropriate note for the Minister accordingly.

Roger Tassé

CANADA

INQUIRY OF MINISTRY

DEMANDE DE RENSEIGNEMENTS AU GOUVERNEMENT

PREPARE 10 COPIES IN ENGLISH AND FRENCH MARKED "TEXT" AND "TRANSLATION"
PRÉPARER 10 COPIES EN ANGLAIS ET FRANÇAIS INSCRIVANT "TEXTE" ET "TRADUCTION"

QUESTION NO. 1549

By *De*
Mr. Olaussen

Order of Business and Notices No. — *Ordre des Travaux et Avis N°*	Page	Date
52	ix	16 March 1973

Subject *Sujet*
Capital Murder

Reply by the Solicitor General
Réponse par le Solliciteur Général
Uno Oaemand
Signature
Minister or Parliamentary Secretary
Ministre ou Secrétaire Parlementaire

QUESTION

In each year 1952 to 1962, what was the number of (a) people executed for capital murder (b) capital murders?

REPLY — *RÉPONSE*

Text *Texte* [X] Translation *Traduction* [ ]

By the Ministry of the Solicitor General

	(a)	(b)
1952	7	18
1953	10	16
1954	8	15
1955	8	14
1956	7	10
1957	4	8
1958	2	19
1959	3	14
1960	3	8
1961	2	11
1962	2	11

CANADA

INQUIRY OF MINISTRY
DEMANDE DE RENSEIGNEMENTS AU GOUVERNEMENT

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INQUIRY OF MINISTRY

DEMANDE DE RENSEIGNEMENTS AU GOUVERNEMENT

PREPARE 10 COPIES IN ENBLISH AND FRENCH MARKED "TEXT" AND "TRANSLATION"
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QUESTION NO. 1549

By *De*
M. Olaussen

Order of Business and Notices No. — *Ordre des Travaux et Avis N°*	Page	Date
52	ix	le 16 mars 1973

Subject *Sujet*
Meurtre

Reply by the Solicitor General
Réponse par le Solliciteur Général
hw. allmand
Signature
Minister or Parliamentary Secretary
Ministre ou Secrétaire Parlementaire

QUESTION

Chaque année, de 1952 à 1962, a) combien y a-t-il eu d'exécutions pour meurtre qualifié, b) de meurtres qualifiés?

REPLY — *RÉPONSE*

Text *Texte* [ ] Translation *Traduction* [ ]

Par le ministère du Solliciteur général

	(a)	(b)
1952	7	18
1953	10	16
1954	8	15
1955	8	14
1956	7	10
1957	4	8
1958	2	19
1959	3	14
1960	3	8
1961	2	11
1962	2	11

INQUIRY OF MINISTRY

DEMANDE DE RENSEIGNEMENTS AU GOUVERNEMENT

PREPARE 10 COPIES IN ENBLISH AND FRENCH MARKED "TEXT" AND "TRANSLATION"
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QUESTION NO. 1549

By — *De*
M. Olaussen

Order of Business and Notices No. — *Ordre des Travaux et Avis N°*	Page	Date
52	ix	le 16 mars 1973

Subject — *Sujet*
Meurtre

Reply by the Solicitor General
Réponse par le Solliciteur Général
hw. allmand
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QUESTION

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REPLY — *RÉPONSE*

Text *Texte* [ ] Translation *Traduction* [ ]

Par le ministère du Solliciteur général

	(a)	(b)
1952	7	18
1953	10	16
1954	8	15
1955	8	14
1956	7	10
1957	4	8
1958	2	19
1959	3	14
1960	3	8
1961	2	11
1962	2	11

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

s.23

TO / À: MR. A.J. MacLEOD, Q.C.

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 16, 1973

SUBJECT / OBJET: Capital Punishment

The Minister has read your draft Cabinet Memorandum on capital punishment and he has raised the following questions:

(a) [redacted]

(b) He would like to have a clear understanding as to the effect of the provisions of the Code before 1967, if these provisions are to be incorporated in a modified Bill C-2. He is especially anxious to know whether the conditions set out in the paragraphs and sub-paragraphs that make up subsection 214(2) of the Criminal Code, are cumulative whether it is sufficient that any one of the conditions set out in the paragraphs or sub-paragraphs be present for a murder to be a capital murder. In addition, the Solicitor General would like to know whether the killing of a hostage, the placing of a bomb on an aircraft or other place resulting in the death of a person, the killing of a kidnapped person, or the deliberate killing of a person by a murderer hired for that purpose, would be covered by the proposed definition of "aggravated murder".

(c) The Solicitor General would like to know more about the U.S. proposals for the reinstatement of the death penalty for a number of federal crimes. We have all read in the papers about Mr. Nixon's statement to the press regarding the death penalty but we should get first-hand information about these proposals from Washington. The Solicitor General would also like to know more about the constitutional division of responsibilities in the United States on this question between the federal government and the State government.

It would be appreciated if you would look into these questions and prepare an appropriate note for the Minister accordingly.

RT/hl

Roger Tassé

001378

DEPARTMENT OF THE SOLICITOR GENERAL
MINISTÈRE DU SOLLICITEUR GÉNÉRAL

MEMORANDUM

March 15, 1973.

(1)

MR. HOLLIES:

The Deputy Minister sends to us a U.S. Supreme Court report concerning the Furman, Jackson and Branch cases, relating to capital punishment.

I assume that when you have perused it you will send it back to Mr. Tasse.

I am also enclosing a copy of the summary of the judgments for your purposes.

A. J. MacLeod.

(2) Mr. Tasse

Returned. Thank you.

19 Mar 73

DEPARTMENT OF JUSTICE MINISTÈRE DE LA JUSTICE

MEMORANDUM

March 12, 1973

Mr. Tassé:

Please return when it has served your purpose.

D.H. Christie.

File
Classer

Returned to Mr Christie - March 21st

(COPY) EGM 141-206

WILLIAM HENRY FURMAN, Petitioner,

v

STATE OF GEORGIA (No. 69-5003)

LUCIOUS JACKSON, Jr., Petitioner,

v

STATE OF GEORGIA (No. 69-5030)

ELMER BRANCH, Petitioner,

v

STATE OF TEXAS (No. 69-5031)

— US —, 33 L Ed 2D 346, 92 S Ct —

(Nos. 69-5003, 69-5030, and 69-5031)

Argued January 17, 1972. Decided June 29, 1972.

SUMMARY

Each of the three petitioners was Negro, was convicted in a state court, and was sentenced to death after a trial by a jury which, under applicable state statutes, had discretion to determine whether or not to impose the death penalty. One petitioner was convicted of murder, and his death sentence was upheld by the Georgia Supreme Court (225 Ga 253, 167 SE2d 628). The second petitioner was convicted of rape, and his death sentence was upheld by the Georgia Supreme Court (225 Ga 790, 171 SE2d 501). And the third petitioner was convicted of rape, and his death sentence was upheld by the Texas Court of Criminal Appeals (447 SW2d 932).

On certiorari, the United States Supreme Court reversed the judgment in each case insofar as it left undisturbed the death sentence imposed, and the cases were remanded for further proceedings. In a per curiam opinion expressing the view of five members of the court, it was held that the imposition and carrying out of the death sentence in the present cases constituted cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments.

Copies on: FURMAN
JACKSON
BRANCH

DOUGLAS, J., concurring, stated that it is cruel and unusual to apply the death penalty selectively to minorities whose numbers are few, who are outcasts of society, and who are unpopular, but whom society is willing to see suffer though it would not countenance general application of the same penalty across the boards, and that because of the discriminatory application of statutes authorizing the discretionary imposition of the death penalty, such statutes were unconstitutional in their operation.

BRENNAN, J., concurring, stated that the Eighth Amendment's prohibition against cruel and unusual punishment was not limited to torturous punishments or to punishments which were considered cruel and unusual at the time the Eighth Amendment was adopted; that a punishment was cruel and unusual if it did not comport with human dignity; and that since it was a denial of human dignity for a state arbitrarily to subject a person to an unusually severe punishment which society indicated that it did not regard as acceptable, and which could not be shown to serve any penal purpose more effectively than a significantly less drastic punishment, death was a cruel and unusual punishment.

STEWART, J., concurring, stated that the petitioners were among a capriciously selected random handful upon whom the sentence of death was imposed, and that the Eighth and Fourteenth Amendments could not tolerate the infliction of a sentence of death under legal systems which permitted this unique penalty to be so wantonly and so freakishly imposed, but that it was unnecessary to reach the ultimate question whether the infliction of the death penalty was constitutionally impermissible in all circumstances, under the Eighth and Fourteenth Amendments.

WHITE, J., concurring, stated that as the state statutes involved in the present cases were administered, the death penalty was so infrequently imposed that the threat of execution was too attenuated to be of substantial service to criminal justice, but that it was unnecessary to decide whether the death penalty was unconstitutional per se, or whether there was no system of capital punishment which would comport with the Eighth Amendment.

MARSHALL, J., concurring, stated that the death penalty violated the Eighth Amendment because it was an excessive and unnecessary punishment and because it was morally unacceptable to the people of the United States.

BURGER, Ch. J., joined by BLACKMUN, POWELL, and REHNQUIST, JJ., dissenting, stated that the constitutional prohibition against cruel and unusual punishments could not be construed to bar the imposition of the punishment of death; that the Eighth Amendment did not prohibit all punishments which the states were unable to prove necessary to deter or control crime; that the Eighth Amendment was not concerned with the process by which a state

determined that a particular punishment was to be imposed in a particular case; that the Eighth Amendment did not speak to the power of legislatures to confer sentencing discretion on juries, rather than to fix all sentences by statutes; and that to set aside the petitioners' death sentences in the present cases on the ground that prevailing sentencing practices did not comply with the Eighth Amendment involved an approach which fundamentally misconceived the nature of the Eighth Amendment guaranty and flew directly in the face of controlling authority of extremely recent vintage.

BLACKMUN, J., dissenting, stated that although his personal distaste for the death penalty was buttressed by a belief that capital punishment served no useful purpose which could be demonstrated, and although the arguments against capital punishment might be a proper basis for legislative abolition of the death penalty or for the exercise of executive clemency, the authority for action abolishing the death penalty should not be taken over by the judiciary in the modern guise of an Eighth Amendment issue.

POWELL, J., joined by BURGER, Ch. J., BLACKMUN, J., and REHNQUIST, J., dissenting, stated that none of the opinions supporting the court's decision provided a constitutionally adequate foundation for the decision, and that the case against the constitutionality of the death penalty fell far short, especially when viewed from the prospective of the affirmative references to capital punishment in the Constitution, the prevailing precedents of the Supreme Court, the limitations on the exercise of the Supreme Court's power imposed by tested principles of judicial self-restraint, and the duty to avoid encroachment on the powers conferred upon state and federal legislatures.

REHNQUIST, J., joined by BURGER, Ch. J., BLACKMUN, J., and POWELL, J., dissenting, emphasized the need for judicial self-restraint, and stated that the most expansive reading of the leading constitutional cases did not remotely suggest that the Supreme Court had been granted a roving commission, either by the Founding Fathers or by the framers of the Fourteenth Amendment, to strike down laws which were based upon notions of policy or morality suddenly found unacceptable by a majority of the Supreme Court.

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
March 7, 1973

SUBJECT / OBJET: Capital Punishment - Bill C-2

I attach a revision of the draft Memorandum to Cabinet on Bill C-2.

If you wish to have this document sent to the members of the committee on temporary absences and parole I imagine that you will arrange for Mr. Cobb to do so.

Att.

A. J. MacLeod.

001384

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: DEPUTY SOLICITOR GENERAL

FROM / DE: MR. B.C. HOFLEY
ASSISTANT DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: March 7, 1973

SUBJECT / OBJET: CAPITAL PUNISHMENT

Mr. MacLeod provided me with a copy of a memorandum proposing changes to Bill C2, and for what they are worth, here are some unsolicited comments.

1. The memorandum provides temporary absence eligibility before parole eligibility for non-aggravated murder but not for aggravated murder. Consideration might be given to a spread between the temporary absence eligibility and the parole eligibility in aggravated murder as well; in order to provide for a programme of re-socialization leading to release. For example, T.A.'s might be granted with escort one year before the expiry of the minimum.

2. Alternative C mentions the possibility of appeal from a recommendation of a trial judge extending the minimum period beyond ten years. Alternative B does not mention the possibility of an appeal from the extension by trial judge of the minimum sentence beyond ten years. If there is a possibility of appeal from a judicial recommendation, e.g. minimum release, then A Fortiori, there should be the possibility of appeal from the judge's minimum sentence.

3. As long as the Parole Board or the release decision making authority contains no judicial representation, the judicial decision to extend the minimum period should not be a recommendation, but a decision that the Parole Board would not have an option to alter. Secondly, if the Parole Board is to maintain the same structure as it has presently, there should be some judicial consultation before the release, whether that release occurs within the minimum judicial sentence where such a sentence is a recommendation, or whether it occurs after the judicial minimum whether a recommendation or a final decision.

...2

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

4. Alternative C recommends that the trial judge, if available, should be consulted before release. In addition to the trial judge, the Chief Justice of the province where the murderer was convicted should be consulted. At present, in England the Lord Chief Justice is consulted before the release of those serving life sentences. The trail judge need be consulted only if his minimum sentence is a recommendation and the Parole Board proposes to release the convicted murderer between the time of the minimum statutory sentence and the minimum judicial sentence.

Finally, the best protection agains too early a release of convicted murderers is good sentencing practice and a properly constituted parole decison making authority. A satisfactory solution to the problem of the release of inmates will only be achieved after a review of sentencing practices and the Huggesson Report and its recommendations have been considered.

One final observation, if the Minister of Justice is to concur in this memorandum, there would be some advantage in having a representative of that department participate in discussion.

B.C. Hofley.

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / A

DM SM
SOLGEN
MAR 5 1 27 PM '73

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE
March 2, 1973

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SUBJECT / OBJET: Bill C-2

I attach a draft Memorandum to Cabinet herein for discussion at Monday's meeting - March 5.

A. J. MacLeod.

Att.

1. Distinction between aggravated person aggravated unsuffused
2. Justice representation ?

DISTRIBUTION:

The Deputy Solicitor General
Mr. J. W. Braithwaite
Mr. A. Therrien
Mr. W. F. Carabine
Mr. J. H. Hollies, Q.C.
Mr. F. P. Miller
Inspector D. G. Cobb

001387

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

Government of Canada | Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

TO / À: MR. J. W. BRAITHWAITE

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ: CONFIDENTIAL

OUR FILE – N/RÉFÉRENCE:

YOUR FILE – V/RÉFÉRENCE:

DATE: March 7, 1973

SUBJECT / OBJET: Capital Punishment - Bill C-2

I attach a revision of the draft Memorandum to Cabinet on Bill C-2.

It would be appreciated if you would kindly let me have your comments on this draft by tomorrow noon, March 8th.

Roger Tassé by R.O.P.

Roger Tassé

Attach.

7/3/73

Mr. Jaguy - Talked to Mr Tassé's secretary & she says Mr. Tassé would like you to see this since Mr. B. is not here. [signature]

OK - [signature] 8-3-73

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

TO / À: Mr. R. Tasse,
Deputy Solicitor General

FROM / DE: Mr. F. P. Miller

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 7, 1973.

SUBJECT / OBJET: Capital Punishment - Bill C-2

This refers to your memorandum of March 7th in this matter.

I have no further comment to make.

F. P. Miller.

001389

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: MR. J. H. HOLLIES, Q.C.

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY CLASSIFICATION - DE SÉCURITÉ: CONFIDENTIAL

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: March 7, 1973

SUBJECT / OBJET: Capital Punishment - Bill C-2

(1)

I attach a revision of the draft Memorandum to Cabinet on Bill C-2.

It would be appreciated if you would kindly let me have your comments on this draft by tomorrow noon, March 8th.

15

Roger Tassé
by RoP

Roger Tassé

Attach.

(2) Mr. Tassé

As we discussed this morning, the Memo should include provisions either exempting our present "lifers" from the new rules concerning parole and TA, or making it clear that such rules would apply to them. Difficulties arise in either case. In the former we may have to seek special Cabinet approval for current T.A. or day parole programs. In the latter, how could it be determined into which category of murder The crime would have fallen had it been tried under the new (proposed) legislation? On balance, I think exemption from new rules is the better course.

As a stylistic "nit pick", I've circled parts of page 1.

Hollies
7 Mar 73

CONFIDENTIAL

March 6, 1973

(DRAFT)

MEMORANDUM TO THE CABINET

Re: Capital Punishment - Bill C-2

PROBLEM

On January 25, 1973, the undersigned introduced in the House of Commons Bill C-2, an Act to amend the Criminal Code with respect to persons convicted of murder. That bill, which is still before the House, would extend for five years the 1967 bill on capital punishment which expired on December 29, 1972, after being in force for five years. The 1967 bill limited the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

not recess

Bill C-2 is comparable to the 1967 bill in that under it the death penalty would only operate where a police or prison officer is murdered. However, Bill C-2 substitutes the new terms "murder punishable by death" and "murder punishable by life imprisonment" for the terms "capital" and "non-capital" murder. This change was made for purposes of clarity and precision.

not recess.

The greatest concern in Parliament and in the press seems to relate to an increase, in recent years, in the number of murders in Canada. This would seem to reflect a feeling that the 1967-72 law was not a sufficient deterrent to murderers.

It is probably true that Canadians have a natural abhorrence toward hanging, but nevertheless a majority seem to think that it is necessary as a deterrent. It is probably correct to assume that the element of deterrence is considered by adult 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.

not true

yes.

It would seem to be desirable to have one or more principles in mind against which to test the laws that are considered necessary or desirable by way of deterrence.

?

A useful test may 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?

good.

also - we might not pass these.

OBJECTIVE

This memorandum seeks the approval of Cabinet for the preparation of amendments to Bill C-2 that would provide, for an indefinite period, the total abolition of capital punishment in Canada for murder, and the substitution therefor of life imprisonment, subject to appropriate conditions that would operate in terms of punishment, deterrence and rehabilitation in relation to the offender.

good but improve language

FACTORS

Amendments to the criminal law that would be calculated to achieve the objective set out on page 1 would, having regard to the current state of public opinion, appear to involve the application of some, if not all, of the following considerations:

1. That 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.

2. That 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 recognize, in terms of punishment and deterrence, the distinctions that have previously existed between capital and non-capital murder.

3. That 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 necessary if imprisonment is to be accepted as an alternative to the death sentence.

   The argument against them is that the longer the period of time (e.g. 10 years) that an offender is in custody, the less likely is the prison experience to be rehabilitative. A period of mandatory custody that leaves no hope in the imprisoned man will tend to lead him 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

4. That 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 superior court judges who preside over murder trials, no two cases would be dealt with alike, and there would soon be a cry for "equal justice". If this is a logical role for a judge in a murder trial, there would seem to be no logical 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. Moreover, where a trial judge may very well be competent to equate his sentence, in terms of punishment, deterrence and rehabilitation to the circumstances of the offence and the offender, in cases such as armed robbery, for example, he has no special qualification to enable him to determine how much of a life sentence for murder should be served before the offender is eligible for parole.

5. That no temporary absence or day parole, without escort, for an offender sentenced to life imprisonment for murder should be permitted during the minimum period that he is required to serve in custody:

   The advantage of such a condition is that it 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, cannot be carried out and that, at the end of that period, whatever chance there may have been to return the offender to society as a useful citizen may have been lost, by reason of his long, uninterrupted imprisonment.

6. That in the most serious and reprehensible cases of murder no parole should be granted during the mandatory minimum period of custody, and thereafter only with the unanimous approval of the full Parole Board:

   The advantage of requiring the full Parole Board's unanimous approval of parole 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 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.

7. That 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 (if there is any) is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody, during lengthy periods of time, of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

Some thirty-six members of the House of Commons have spoken in the debate. The main recommendations that have been made by members for change are set out, very briefly, in Appendix A.

COURSES OPEN TO THE GOVERNMENT

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

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

2. Amend Bill C-2 to continue indefinitely the 1961-67 law (that has existed since December 29, 1972), under which persons convicted of "capital murder" were liable to capital punishment and persons convicted of "non-capital murder" were liable to imprisonment for life (see Appendix B for the 1961-67 definitions).

3. Another course is to amend Bill C-2 to restore the law to what it was prior to 1961, when all murder was capital and the only punishment was death (see Appendix C for definition).

4. The undersigned, however, proposes that Bill C-2 should be amended to give effect to most of the factors set out on pages 2, 3 and 4 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~~" (being what it was prior to December 29, 1967, under the heading "capital murder"), i.e., was "planned and deliberate" on the part of the murderer, was done by the

murderer's "own act" or was the death of a police or prison officer, on duty, caused by the murderer's "own act", or

(ii) ~~"non-aggravated murder"~~ 2nd degree, i.e., being all murder other than aggravated murder (namely, the equivalent of non-capital murder between 1961 and 1967); (see Appendix B 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 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 the full Parole Board were unanimous;

There would be no reference to the Governor in Council for approval of parole but, in both types of murder, there should 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 seven years;

(ii) no temporary absence or day parole, without escort, to be permitted until three and one-half 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.

5. Further variations on the principles set out in para. 4 above might be considered as follows:

(a) that any recommendation for an extension of the minimum period of custody would not be binding on the Parole Board or the Governor

..6

in Council and any such recommendation, when made, could be appealed to the court of appeal;

(b) that the trial judge, if available, must be consulted before a convicted murderer is released after the mandatory period of custody has expired;

(c) that after expiration of the mandatory period of custody the offender could be released only if a recommendation to that effect has been approved by the Governor in Council as a result of a unanimous decision of all members of the Parole Board.

Needless to say these, and other variations relating to conditions concerning the release of convicted murderers serving life sentences should be designed to strengthen the screening process for the release from custody of such persons while jeopardizing, as little as possible, the rehabilitation programs of federal correctional services.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

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, by way of correspondence or otherwise, with the provinces prior to introduction of the 1961 and 1967 legislation, nor prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

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

PUBLIC RELATIONS CONSIDERATIONS

The study by Mr. Bernard Grenier, which brought up to date the 1965 Department of Justice paper entitled "Capital Punishment - Material Relating to Its Purpose and Value", has been distributed to Members of Parliament and is available to the public, as is the study, sponsored by the Department of the Solicitor General, by Professor E. A. Fattah of the Department of Criminology, University of Montreal, entitled "The Deterrent Effect of Capital Punishment". In the opinion of the undersigned it is no more appropriate now for the government to undertake a public relations program emphasizing any particular aspect of the capital punishment issue, now before Parliament, than it was before Bill C-2 was introduced.

CAUCUS CONSULTATION

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

LIBERAL FEDERATION

There is apparently no policy statement on the subject.

..7

RECOMMENDATION

The undersigned recommends that Cabinet should instruct the Department of Justice to prepare whatever legislation is necessary to implement paragraph 4 on pages 4 and 5 of this submission.

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 B

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.

CRIMINAL CODE SECTIONS DEFINING THE CRIME OF MURDER AND RELATED HOMICIDAL OFFENCES

MURDER, MANSLAUGHTER AND INFANTICIDE

Murder

201. 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.

Murder in commission of offences

202. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or an 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

Intention to cause bodily harm

(*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;

Administering overpowering thing

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

Stopping the breath

(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

Using weapon

(*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

Copies sent to:
Mr. J. W. Braithwaite (Passed to Mr Tassé) ✓
Mr. Andre Therrien (Out of town until Monday)
Mr. W.F. Carabine No comment
Mr. F.P. Miller ✓
Mr. J.H. Hollies, Q.C. ✓
Mr. D.G. Cobb (for info)

FROM / DE

DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE
March 7, 1973

SUBJECT / OBJET Capital Punishment - Bill C-2

I attach a revision of the draft Memorandum to Cabinet on Bill C-2.

It would be appreciated if you would kindly let me have your comments on this draft by tomorrow noon, March 8th.

Roger Tassé
by ROP

Roger Tassé

Attach.

/ROPESKETT

001401

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

141-206

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 Rap
Classer

DATE: March 7, 1973

SUBJECT / OBJET: Capital Punishment - Bill C-2

I attach a revision of the draft Memorandum to Cabinet on Bill C-2.

If you wish to have this document sent to the members of the committee on temporary absences and parole I imagine that you will arrange for Mr. Cobb to do so.

Att.

A. J. MacLeod.

001402

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: DEPUTY SOLICITOR GENERAL

FROM / DE: MR. B.C. HOFLEY
ASSISTANT DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: March 7, 1973

SUBJECT / OBJET: CAPITAL PUNISHMENT

Mr. MacLeod provided me with a copy of a memorandum proposing changes to Bill C2, and for what they are worth, here are some unsolicited comments.

1. The memorandum provides temporary absence eligibility before parole eligibility for non-aggravated murder but not for aggravated murder. Consideration might be given to a spread between the temporary absence eligibility and the parole eligibility in aggravated murder as well; in order to provide for a programme of re-socialization leading to release. For example, T.A.'s might be granted with escort one year before the expiry of the minimum.

2. Alternative C mentions the possibility of appeal from a recommendation of a trial judge extending the minimum period beyond ten years. Alternative B does not mention the possibility of an appeal from the extension by trial judge of the minimum sentence beyond ten years. If there is a possibility of appeal from a judicial recommendation, e.g. minimum release, then A Fortiori, there should be the possibility of appeal from the judge's minimum sentence.

3. As long as the Parole Board or the release decision making authority contains no judicial representation, the judicial decision to extend the minimum period should not be a recommendation, but a decision that the Parole Board would not have an option to alter. Secondly, if the Parole Board is to maintain the same structure as it has presently, there should be some judicial consultation before the release, whether that release occurs within the minimum judicial sentence where such a sentence is a recommendation, or whether it occurs after the judicial minimum whether a recommendation or a final decision.

...2

001403

4. Alternative C recommends that the trial judge, if available, should be consulted before release. In addition to the trial judge, the Chief Justice of the province where the murderer was convicted should be consulted. At present, in England the Lord Chief Justice is consulted before the release of those serving life sentences. The trail judge need be consulted only if his minimum sentence is a recommendation and the Parole Board proposes to release the convicted murderer between the time of the minimum statutory sentence and the minimum judicial sentence.

Finally, the best protection agains too early a release of convicted murderers is good sentencing practice and a properly constituted parole decison making authority. A satisfactory solution to the problem of the release of inmates will only be achieved after a review of sentencing practices and the Huggesson Report and its recommendations have been considered.

One final observation, if the Minister of Justice is to concur in this memorandum, there would be some advantage in having a representative of that department participate in discussion.

B.C. Hofley.

Mr. [redacted]

Need copy for

my file —

"capital punishment"

SOLICITOR GENERAL

MEMORANDUM

File
Classer

Deputy Solicitor General

This may be of interest

Mar 6/73

TG111
d czzbzxtzxtzxt

CP Wire Feature March 6/73

239

convicts

DRUMHELLER, Alta. CP - A 25-year minimum sentence for capital murder would turn a convicted killer ''into an animal,,, who would have lost all hope for rehabilitation and might kill again to escape.

That was the message 15 convicted murderers imprisoned in the Drumheller penitentiary gave Sunday at a meeting with Marcel Prud,Homme, the Montreal member of Parliament and co-author of a proposed amendment to the capital punishment bill now before the House of Commons justice committee.

Mr. Prud,Homme, who drafted the amendment with fellow liberal Jim Flemming of Toronto, has proposed a 25-year eligibility date for parole in cases of ''first-degree murder.,,

First-degree murder would include murder of a peace officer, prison guard, and murder during a kidnap, rape, or armed robbery. The amendment made no mention of punishment in other cases of murder.

Mr. Prud,homme told the prisoners the 25-year minimum sentence is a necessary compromise between abolishionists and retentionists in the current debate.

''The mood of the country is in favor of hanging,,, he said.

The prisoners said in their experience a 25-year sentence ''would destroy a man.,,

''A 25-year sentence would take all hope away and a man can,t live in prison without hope,,, one convict said.

''A man might kill to escape-he would have nothing to lose.,,

The ''minimum life sentence,, reprsents the minimum term of a life sentence which must be served before a prsoner is eligible for parole.

05-03-73 06.34pes

TF112
d vssezxtzxtbyl

Ottawa, Ontario
K1A 0P8

March 5, 1973

Dear Don,

Attached is a copy of a letter that I have addressed to your predecessor on February 1 on capital punishment, and the Right Honourable John D. Diefenbaker's suggestion that the matter should be referred to the Supreme Court of Canada for a decision on the question of whether capital punishment is still legal in Canada in view of the Canadian Bill of Rights.

The Solicitor General would appreciate it if we could have the benefit of your views on this question as soon as possible.

Yours sincerely,

Roger Tassé

RT/hl

Enc.
Mr. D.S. Thorson,
Deputy Minister of Justice and
Deputy Attorney General of Canada,
Justice Building,
Ottawa, Ontario.
K1A 0H8

Ottawa, Ontario
K1A 0P8

February 1, 1973

Dear Don,

I wish to refer to our telephone conversation of yesterday morning regarding capital punishment, and more particularly the remarks made by the Right Honourable John Diefenbaker on January 30, 1973 during the debate on Bill C-2.

Mr. Diefenbaker has raised the question whether the Canadian Bill of Rights has application in connection with capital punishment in Canada. As I understand his argument, there would be some doubt as to the application of the provisions of the Criminal Code regarding the imposition of capital punishment in view of the provisions of the Canadian Bill of Rights.

I understand that this is a question that the Department has given some thought to and it would be appreciated if you were to let us have the views of your Department on this question, as the Solicitor General has expressed the wish to be fully briefed on the matter.

Sincerely yours,
ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. PAGÉ

Roger Tassé

RT/hl

Mr. D.S. Maxwell,
Deputy Minister of Justice,
Ottawa.

c.c. Solicitor General

MEMORANDUM

CLASSIFICATION

TO
A

Mr. G.C. Koz,
A/Administrative Assistant,
Ministry of the Solicitor General.

YOUR FILE No.
Votre dossier

OUR FILE No. GH 1510-71
Notre dossier

FROM
De

Commissioner

DATE 2 MAR 1973

FOLD

SUBJECT
Sujet

Ministerial Inquiry - Incidence of murder of policeman in U.S.A.

Your memorandum of 26 Feb 73 refers.

The L.O. Washington was contacted by phone on 27 Feb 73 and replied this date by telex, copy of which is attached for the information of the Minister. In addition, the L.O. Washington contacted the Centre for Correctional and Social Concerns, Inc., Chicago, Illinois, and asked them to forward a publication "The Unexamined Death - An Analysis of Capital Punishment" by Hans W. Mattick, Chicago University. That material arrived today and is enclosed, also for the Minister's information. The additional material referred to in the telex will be forwarded as soon as it is received.

for W.L. Higgitt,
Commissioner.

8 ROUTINE WASH MARCH 2 UNCLAS

COMMR OTT

WL0176/73 ATTN DEPARTMENTAL SECRETARY
REF YOUR REQUEST FOR STATISTICS SHOWING NUMBER OF POLICE MURDERS IN STATES WITH AND WITHOUT CAPITAL PUNISHMENT. I HAVE EXAMINED THIS MATTER WITH SEVERAL LAW ENFORCEMENT SOURCES AND SEVERAL PRIVATE SOURCES AND DISCOVERED THAT THESE PRECISE STATS WERE NOT AVAILABLE. HOWEVER I DID COLLECT THE THREE NECESSARY INGREDIENTS (1) NUMBER OF POLICE MURDERS IN 1971 BY STATE
(2) POPULATION OF STATE
(3) LIST OF STATES STILL HAVING CAPITAL PUNISHMENT.
FROM THIS MATERIAL I WILL LIST THE EXACT STATISTICS YOU HAVE REQUESTED. IT IS IMPORTANT TO REMEMBER THAT THE DEATH PENALTY IS UNDER STUDY HERE AND THE SUPREME COURT PLACED THE ONUS ON THE STATE IN A DECISION IN JUNE 72. ALSO THERE HAS NOT BEEN AN EXECUTION IN THE USA SINCE 1967 SO THE DETERRENCE IS LESSENING EACH YEAR. I AM SENDING BY MAIL THIS DATE SEVERAL PUBLICATIONS CONTAINING STUDIES ON THIS VERY PROBLEM ALONG WITH STATISTICS ETC. ALSO YOU WILL RECEIVE SOME MATERIAL FROM THE WORLD CORRECTIONAL SERVICE CENTRE IN CHICAGO BY DIRECT MAIL WHICH SHOULD CONTAIN USEFUL STATISTICS. I GATHER FROM READING SOME OF THE STUDIES DONE THAT BARE STATISTICS CAN BE MISLEADING, NEVERTHELESS I AM FURNISHING THEM AS REQUESTED
SECTION A LISTS STATES WHICH HAVE ABOLISHED CAPITAL PUNISHMENT FOLLOWED BY POPULATION IN BRACKETS AND FOLLOWED BY NUMBER OF POLICE MURDERS

ALASKA (313,000) 0
ARIZONA (1,800,000) 4
COLORADO (2,200,000) 1
DELAWARE (558,000) 0
HAWAII (789,000) 0
IOWA (2,800,000) 2
KANSAS (2,200,000) 0
MAINE (1,000,000) 0
MICHIGAN (9,000,000) 8
MISSOURI (4,700,000) 3
NEW MEXICO (1,000,000)(1)
NEW YORK (18,000,000) 16
NORTH DAKOTA (625,000) 1
OREGON (2,150,000) 2
RHODE ISLAND (960,000) 0
SOUTH DAKOTA (670,000) 0
TENNESSEE (3,900,000) 1
VERMONT (450,000) 0
WASHINGTON (3,450,000) 0

ARIZONA (1,800,000) 4

COLORADO (2,200,000) 1

DELAWARE (558,000) 0

HAWAII (789,000) 0

IOWA (2,800,000) 2

KANSAS (2,200,000) 0

MAINE (1,000,000) 0

MICHIGAN (9,000,000) 8

MISSOURI (4,700,000) 3

NEW MEXICO (1,000,000)(1)

NEW YORK (18,000,000) 16

NORTH DAKOTA (625,000) 1

OREGON (2,150,000) 2

RHODE ISLAND (960,000) 0

SOUTH DAKOTA (670,000) 0

TENNESSEE (3,900,000) 1

VERMONT (450,000) 0

WASHINGTON (3,450,000) 0

WEST VIRGINIA (1,750,000) 0

WISCONSIN (4,475,000) 0

MINNESOTA (3,800,000) 1

SECTION B LISTS STATES WHICH HAVE CAPTIAL PUNISHMENT ON THE STATUTES

ALABAMA (3,475,000) 3

ARKANSAS (1,900,000) 0

CALIFORNIA (20,000,000) 14

CONNECTICUT (3,000,000) 1

FLORIDA (7,000,000) 3

WASHINGTON DC (1,500,000) 4

GEORGIA (4,600,000) 3

IDAHO (700,000) 0

ILLINOIS (11,200,000) 6

INDIANA (5,200,000) 4

KENTUCKY (3,300,000) 5

LOUISIANA (3,600,000) 0

MARYLAND (4,000,000) 2

MASSACHUSETTS (5,700,000) 0

MISSISSIPPI (2,200,000) 2

MONTANA (700,000) 0

NEBRASKA (1,500,000) 1

NEVADA (500,000) 0

NEW HAMPSHIRE (700,000) 1

NEW JERSEY (7,300,000) 4

NORTH CAROLINA (5,150,000) 2

OHIO (10,775,000) 2

OKLAHOMA (2,600,000) 4

PENNSYLVANIA (11,875,000) 4

SOUTH CAROLINA (2,600,000) 3

TEXAS (11,450,000) 15

UTAH (1,100,000) 1

VIRGINIA (4,700,000) 2

WYOMING (340,000 0

MINNESOTA (3,800,000) 1

SECTION B LISTS STATES WHICH HAVE CAPTIAL PUNISHMENT ON THE STATUTES

ALABAMA (3,475,000) 3

ARKANSAS (1,900,000) 0

CALIFORNIA (20,000,000) 14

CONNECTICUT (3,000,000) 1

FLORIDA (7,000,000) 3

WASHINGTON DC (1,500,000) 4

GEORGIA (4,600,000) 3

IDAHO (700,000) 0

ILLINOIS (11,200,000) 6

INDIANA (5,200,000) 4

KENTUCKY (3,300,000) 5

LOUISIANA (3,600,000) 0

MARYLAND (4,000,000) 2

MASSACHUSETTS (5,700,000) 0

MISSISSIPPI (2,200,000) 2

MONTANA (700,000) 0

NEBRASKA (1,500,000) 1

NEVADA (500,000) 0

NEW HAMPSHIRE (700,000) 1

NEW JERSEY (7,300,000) 4

NORTH CAROLINA (5,150,000) 2

OHIO (10,775,000) 2

OKLAHOMA (2,600,000) 4

PENNSYLVANIA (11,875,000) 4

SOUTH CAROLINA (2,600,000) 3

TEXAS (11,450,000) 15

UTAH (1,100,000) 1

VIRGINIA (4,700,000) 2

WYOMING (340,000 0

LO WASH

PSE ACK

CORRECTION IN SECTION A AFTER NEW MEXICO FIGURE SHUD BE 1

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: Mr. R. Tasse,
Deputy Solicitor General.

FROM / DE: F. P. Miller

Confidential

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	March 2, 1973.

SUBJECT / OBJET: Bill C-2
Committee Meeting, Monday, March 5th.

F. A.

Herewith my comments on the draft memorandum to Cabinet as requested.

GENERAL:

In the context of our discussions to date the memorandum appears to me to set out well the alternatives open to us and reflects the consensus of our discussions with appropriate elaboration and useful argument.

DETAIL:

Page 1, para 4 — The reference to a specific figure, i.e. (some 65%) seems to me to require some reference to source or some temporizing introduction such as "it would appear".

Page 2, item B 2 (a) — The description here is not the full text of the pre 1967 law. I assume therefore, it is quoted just as example but the intention is to use the full substance of the pre 1967 law.

Page 3, item 4 (a) — Perhaps there should be some re-wording to clarify the possibility of a total of 20 years.

Page 4, continuation of item 8 — As I have indicated in discussions, I do not fully agree with this statement. I think, as a matter of fact, that in some cases rehabilitation has continued or taken place after a number of years of incarceration. Nevertheless, I would be quite satisfied to see the phrase "in many cases" inserted between the word "that" and

. . . 2.

001414

Page two:

the word "the" in the first line of the page.

Page 4, item 9, para 2 — Here again I quarrel with the sweeping nature of the claim to interference with rehabilitation but would be happy with the insertion of the phrase "that in some cases", after the word "period" and before the word "whatever" in the fourth line from the bottom of the page.

Page 5, item 11 — I wonder if it would not be appropriate to include some statement that in the field of criminal law there has never been a complete enfringement on the Royal Prerogative of Mercy.

I regret not being able to attend the meeting but I am pleased with the first class paper produced by Mr. MacLeod.

F. P. Miller.

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

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

SUBJECT / OBJET: Bill C-2

I attach a draft Memorandum to Cabinet herein for discussion at Monday's meeting - March 5.

A. J. MacLeod

Att.

A. J. MacLeod.

DISTRIBUTION:

The Deputy Solicitor General ✓
Mr. J. W. Braithwaite
Mr. A. Therrien
Mr. W. F. Carabine
Mr. J. H. Hollies, Q.C.
Mr. F. P. Miller
Inspector D. G. Cobb

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

CONFIDENTIAL

March 1, 1973

MEMORANDUM TO THE CABINET

Re: Capital Punishment - Bill C-2

PROBLEM

On January 25, 1973, the undersigned introduced in the House of Commons Bill C-2, an Act to amend the Criminal Code with respect to persons convicted of murder. That bill, which is still before the House, would extend for five years the 1967 bill on capital punishment which expired on December 29, 1972, after being in force for five years. The 1967 bill limited the death penalty for capital murder to cases where the accused, by his own act, caused or assisted in causing the death of a police or prison officer, acting in the course of his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

Bill C-2 is comparable to the 1967 bill in that under it the death penalty would only operate where a police or prison officer is murdered. However, Bill C-2 substitutes the new terms "murder punishable by death" and "murder punishable by life imprisonment" for the terms "capital" and "non-capital" murder. This change was made for purposes of clarity and precision.

The greatest concern in Parliament and in the press seems to relate to an increase, in recent years, in the number of murders in Canada. This would seem to reflect a feeling that the 1967-72 law was not a sufficient deterrent to murderers.

X It is probably true that Canadians have a natural abhorrence toward hanging, but nevertheless a large majority (some 65%) seem to think that it is necessary as a deterrent. It is probably correct to assume that the element of deterrence is considered by adult 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.

It would seem to be desirable to have one or more principles in mind against which to test the laws that are considered necessary or desirable by way of deterrence.

A useful test may 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?

OBJECTIVES

This memorandum seeks the approval of Cabinet for the preparation of amendments to Bill C-2 that would provide, for an indefinite period, the total abolition of capital punishment in Canada for murder, and the substitution therefor of life imprisonment, subject to appropriate conditions that would operate in terms of punishment, deterrence and rehabilitation in relation to the offender.

FACTORS

Some thirty-six members of the House of Commons have spoken in the debate. The recommendations they have made for changes in Bill C-2 are, very briefly, as follows:

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.

COURSES OPEN TO THE GOVERNMENT

The courses open to the government would seem to include the following:

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

B. Amend Bill C-2 along lines that, in the opinion of the undersigned, are likely to be supported by a majority of the House and are calculated to be a progressive social step, as follows:

1. There would be a total abolition of capital punishment for an indefinite period.

2. Murder would be defined as

(a) "aggravated murder" (being what it was prior to December 29, 1967, under the heading "capital murder"), i.e., was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer, on duty, caused by the murderer's "own act", or

(b) "non-aggravated murder", i.e., being all murder other than aggravated murder (namely, the equivalent of non-capital murder between 1961 and 1967).

..3

3. The sentence for both types of murder would be a life sentence.

4. In the case of "aggravated murder" the following conditions would apply:

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

   (b) 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

   (c) no full parole would be authorized during the minimum period of custody, as fixed by the statute or the trial judge, and thereafter only if the full Parole Board were unanimous.

There would be no reference to the Governor in Council for approval of parole but there should be authority in the Governor in Council to reduce, ~~by an exercise of the royal prerogative of mercy~~, the minimum period of custody to a lesser term of years than that required by law.

5. "Non-aggravated murder" would have these conditions:

   (a) a life sentence in every case, with a minimum period of custody of seven years;

   (b) no temporary absence or day parole, without escort, to be permitted until three and one-half years have been served; and

   (c) 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.

6. Hanging versus life imprisonment

The advantage of hanging 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.

7. Mandatory minimum periods in custody

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

The argument against them is that the longer the period of time (e.g. 10 years) that an offender is in custody, the less likely is the prison experience to be rehabilitative. A period of mandatory custody that leaves no hope in the imprisoned man will tend to lead him 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.

8. Judge determining minimum term in custody

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 superior court judges who preside over murder trials, no two cases would be dealt with alike, and there would soon be a cry for "equal justice". If this is a logical role for a judge in a murder trial, there would seem to be no logical 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 often imposed. Moreover, where a trial judge may very well be competent to equate his sentence, in terms of punishment, deterrence and rehabilitation to the circumstances of the offence and the offender, in cases such as armed robbery, for example, he has no special qualification to enable him to determine how much of a life sentence for murder should be served before the offender is eligible for parole.

9. No temporary absence or day parole during minimum period in custody

The advantage of such a condition is that it 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, cannot be carried out and that, at the end of that period, whatever chance there may have been to return the offender to society as a useful citizen may have been lost, by reason of his long, uninterrupted imprisonment.

10. Unanimous agreement of full Parole Board

The advantage of requiring the full Parole Board's unanimous approval of parole 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 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 seven or eight members.

11. Royal prerogative of mercy

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 (if there is any) is that it would provide an opportunity for exceptions by the government to the otherwise strict requirements of the law for the custody, during lengthy periods of time, of persons sentenced to life imprisonment for murder, and on that account might not find favour with the press and public.

C. An alternative involving the same principle as set out in B. above might be changed in detail as follows:

that any recommendation for an extension of the minimum period of custody would not be binding on the Parole Board or the Governor in Council and any such recommendation, when made, could be appealed to the court of appeal; that the trial judge, if available, must be consulted before a convicted murderer is released after the 10-year mandatory period of confinement has expired; thereafter the offender could be released only if a recommendation to that effect has been approved by the Governor in Council as a result of a unanimous decision of all members of the Parole Board.

Needless to say these, and other variations relating to conditions concerning the release of convicted murderers serving life sentences should be designed to strengthen the screening process for the release from custody of such persons while jeopardizing, as little as possible, the rehabilitation programs of federal correctional services.

D. The law could be amended so that it would revert to what it was during the period prior to 1961 when all murder was capital and the only penalty was death.

FEDERAL-PROVINCIAL RELATIONS CONSIDERATIONS

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, by way of correspondence or otherwise, with the provinces prior to introduction of the 1961 and 1967 legislation, nor prior to the introduction of Bill C-2.

INTERDEPARTMENTAL CONSULTATION

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

PUBLIC RELATIONS CONSIDERATIONS

The study by Mr. Bernard Grenier, which brought up to date the 1965 Department of Justice paper entitled "Capital Punishment - Material Relating to Its Purpose and Value", has been distributed to Members of Parliament and is available to the public, as is the study, sponsored by the Department of the Solicitor General, by Professor E. A. Fattah of the Department of Criminology, University of Montreal, entitled "The Deterrent Effect of Capital Punishment". In the opinion of the undersigned it is no more appropriate now for the government to undertake a public relations program emphasizing any particular aspect of the capital punishment issue, now before Parliament, than it was before Bill C-2 was introduced.

CAUCUS CONSULTATION

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

LIBERAL FEDERATION

There is apparently no policy statement on the subject.

RECOMMENDATION

The undersigned recommends that Cabinet should instruct the Department of Justice to prepare whatever legislation is necessary to implement paragraph B. on page 2 of this submission.

Respectfully submitted,

Solicitor General

I concur

Minister of Justice

MEMORANDUM

GOVERNMENT OF CANADA

NOTE DE SERVICE

GOUVERNEMENT DU CANADA

FROM / DE: A. Therrien
Vice-Chairman
NATIONAL PAROLE BOARD

TO / À: Roger Tassé
DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE — N/RÉFÉRENCE	
YOUR FILE — V/RÉFÉRENCE	
DATE	March 1st, 1973

SUBJECT / SUJET: Murder - Capital Punishment - Statistics

This is further to your memo of February 23 on the above-named topic.

The statistics we have at this time show that the average time served for death commuted cases during the partial abolishment of capital punishment was 13.5 years. The same figure for non-capital murder was 7.8 years.

Your assumption is correct that the average time served before parole by murderers is the longest period. It is very difficult to compare the average time served for murderers and other categories of crimes of violence. Murderers are all serving the same sentence and are eligible for parole at the same period of time. In the case of other categories of crime, the range of sentences and consequently of parole eligibility is very wide.

In order to give a concrete explanation of what is meant, I have examined our statistics for 1970 (last year for which we have complete figures). Eleven (11) inmates serving time for attempted murder were released on parole. Time served ranged from 6 months to 15 years and the average was 5 years 10 months. For the 75 cases of manslaughter, time served ranged from 6 months to 10 years and the average was 2½ years. For 88 cases of rape, time served ranged from 1 month to 6 years and the average was 1½ years. For 742 cases of robbery, time served ranged from 1 month to 15 years and the average was 1 year 8 months.

A. Therrien

/hl

TT Minister:
This is per your request.
If you need additional information, please let me know.
RT.
March 1/73.

001423

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	February 23, 1973

TO / À: MR. A. THERRIEN

FROM / DE: DEPUTY SOLICITOR GENERAL

SUBJECT / OBJET: Murder - Capital Punishment - Statistics

1. I am familiar with the rules enacted under the Parole Act regarding the eligibility for parole of persons convicted of various types of crimes.

2. The Statistics, as I recall, for the period of five years during which the partial abolishment of capital punishment was in force, show that the average time served in prison by persons convicted for murder has been about 13 years.

3. I would assume that for all categories of crime, especially the crimes of violence, the average time served by murderers is the longest period.

4. I would appreciate it if you could confirm whether this assumption is correct and if you could let me have any data regarding the average time served by inmates by categories of crimes.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSÉ

RT/hl

Roger Tassé

001424

141-206

[redacted]

File Classer C.J.

OTTAWA, Ontario
K1A 0P8

February 27, 1973

Dear Sir:

The Honourable Warren Allmand, Solicitor General of Canada, would like to obtain the following information pertaining to the current debate in the House of Commons on capital punishment:

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

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

It was ascertained by preliminary inquiry on the telephone that the material for such information is available in the records gathered by your division. It would be appreciated if such information be compiled as early as possible.

Yours sincerely,

Roger Tassé
Deputy Solicitor General

GCKOZ/cg

Mr. K. Holt,
A/Director,
Judicial Division,
Statistics Canada,
No. 5 Temporary Bldg.,
Carling Avenue,
OTTAWA, Ontario.

Copy one 83-3

Mor[redacted]

Evidence only of murder → peine de mort.

Blaker —

Sentencing - 5 years - withdrawal of 2 exceptions — (total abolition).

Laurence

wider exceptions (cab. pun.) - cab. punishment - form of penalty.

Laurence —

WA. amn. attempt to abrogate principle of B.U.C.-2 — U.S. capital pun. abolition.

Williams - Mays. 494 - function of pun. —

no amend - in manner ~~matter~~ as result of principle of B.U. principle → partial retention of abolition Cab. Pun.

OK in comm. of whole house —

Beauchesnes — 284-5. # 402-6 —

as Williams - Laurence — directing his attention to abolition.

Blaker -

Beauch. 381.2: —

Clark: — doubt as to admissibility because of source —

Justice would need time

to review amendments (from anyone)

to put them in terms compatible

with Criminal Code style.

Moved by Mr. Lawrence

That Bill C-2, an Act to amend the Criminal Code be amended by adding the following clause after line 11 on page 4:

"8. Section 669 of the said Act is repealed and the following substituted therefor:

"669. The sentence to be pronounced against a person who is sentenced to death shall be that he shall be executed by drug for euthanasia."

and by re-numbering subsequent clauses accordingly."

Moved by: Mr. Lawrence

That subsection 214(2) proposed in Clause 2 of Bill C-2, an Act to amend the Criminal Code be amended by deleting the comma in line 15, by inserting an "(a)" immediately before the word "in" in line 16, and re-numbering paragraphs (a) and (b) as (i) and (ii), and by adding new paragraphs so that subsection 214(2) proposed in Clause 2 will read as follow:

"214. (2) Murder is punishable by death

(a) in respect of any person, where such person by his own act caused or assisted in causing the death of

(i) a police officer, police 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,

(b) where a person causes the death of a human being while committing or attempting to commit an offence under section 76.1, and

(c) where the person who caused the death of a human being has been previously convicted of manslaughter, criminal negligence causing death, or murder whether or not such murder is punishable by death.

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.

without escort

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~~ subsection 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."

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: MR. D. COBB

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: February 23, 1973

SUBJECT / OBJET: Capital Punishment - Statistics

cc: Jim McD (1)

expected by March 5-6

I would appreciate it if you could round up the following information for the Minister:

(a) the occupation, by types or categories, of those convicted of 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.

actual occ vs trade or prof if any.

(3) spoke with Mrs Blesznyuski:
available in Stats Canada, but it may take longer than one week to compile it.

(4) spoke with Ken HOLT (A/Director) 11⁴⁵ hrs
- will assess the amount of work to be done

(5) spoke → Mrs Blesznyuski
" work completed, errors found, corrected by hand. Should be ready Monday - 19 March

(2) try RCMP liaison in Washington D.C. by fastest possible means

'phoned Liaison RCMP, → memo to Comm-2 Feb. 26 at 1230 hrs

Roger Tassé

001435

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: MR. D. COBB

File Classer

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: February 23, 1973

SUBJECT / OBJET: Capital Punishment - Statistics

I would appreciate it if you could round up the following information for the Minister:

(a) the occupation, by types or categories, of those convicted of 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.

ORIGINAL SIGNED BY
R. TASSÉ

RT/hl

Roger Tassé

001436

s.23

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: **MR. J. McDONALD,**
SPECIAL ASSISTANT TO THE MINISTER
(Through Mr. Tassé)

FROM / DE: **DEPARTMENTAL COUNSEL**

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

SUBJECT / OBJET: **Hyl Chappell's letter to the Editor of the Globe and Mail regarding capital punishment**

You have asked for a memorandum containing my comments upon Mr. Chappell's letter to the Globe and Mail.

I have reviewed the letter as printed in the newspaper and, as well, have looked at the more lengthy version that has been provided. My comments are as follows:

(a) [redacted]

.....2

001437

(b)

(c)

(d)

(e)

[redacted]

s.23

(f)

(g)

[redacted]

.....4

[redacted]

J.H. Hollies,
Departmental Counsel

JHH/mab

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

TO / À: ZAVIE LEVINE

FROM / DE: WARREN ALLMAND

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	February 9, 1973.

SUBJECT / OBJET: Hyl Chappell's letter to the Editor of the Globe and Mail regarding capital punishment

Would you kindly have the attached letter referred to the proper people in our Department for analysis and comment.

W.A.

001441

FILE COPY

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

Forwarded To S/G Jan 16th

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE: February 13, 1973

TO / A: THE DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SUBJECT / OBJET: Bill C-117, An Act to Provide for a National Plebiscite on the Abolition of Capital Punishment - Mr. Reynolds

The Solicitor General requests a brief on the proposal set out in Bill C-117 (Mr. Reynolds) to the effect that at the first election after the bill is passed and receives Royal Assent, there should be held a national plebiscite on the abolition of capital punishment in Canada, to be conducted by the Chief Electoral Officer. The questions to be asked in the plebiscite would be:

> " The punishment upon conviction for the crime of homicide shall, by amendment to the Criminal Code of Canada, be as follows:
>
> 1. 'Death with the prerogative of mercy only when so recommended by the presiding trial judge'; or
>
> 2. 'Life imprisonment with eligibility for parole or other release arising only after 20 years of such sentence being served.'"

It has never been the federal practice in Canada to submit issues - sociological or other - to the public by way of referendum. It is greatly to be doubted whether the highly emotional issue of capital punishment should be the issue upon which, by way of precedent, the Canadian Government should seek to determine the views of the Canadian public.

Members of Parliament are supposed to reflect the opinions of the majority of their constituents, but should also be leaders in thinking in terms of the national good. Neither of these roles are fulfilled by Members of Parliament where an issue that they are called upon to determine is referred, by way of plebiscite, to the voters.

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The highly emotional issue of capital punishment should not be bound up with the question of the election of a national government. It is generally accepted that a free vote on the issue in the House of Commons is desirable so that a government would not stand or fall on the question of capital punishment. It would seem to be equally true that a government should not be elected - or fail to be re-elected - on the issue of capital punishment.

For the foregoing reasons it would seem that the Solicitor General and his colleagues should oppose Mr. Reynolds' bill.

A. J. MacLeod.

AJM:ECM

Mr. McLeod

Forwarded to A/G
Feb 16/73
Note Pg no. 2.13

THE DEPUTY SOLICITOR GENERAL

SPECIAL ADVISER,
CORRECTIONAL POLICY

February 13, 1973

Bill C-117, An Act to Provide for a National Plebiscite on the Abolition of Capital Punishment - Mr. Reynolds

The Solicitor General requests a brief on the proposal set out in Bill C-117 (Mr. Reynolds) to the effect that at the first election after the bill is passed and receives Royal Assent, there should be held a national plebiscite on the abolition of capital punishment in Canada, to be conducted by the Chief Electoral Officer. The questions to be asked in the plebiscite would be:

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> 2. 'Life imprisonment with eligibility for parole or other release arising only after 20 years of such sentence being served.'"

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The highly emotional issue of capital punishment should not be bound up with the question of the election of a national government. It is generally accepted that a free vote on the issue in the House of Commons is desirable so that a government would not stand or fall on the qucstion of capital punishment. It would seem to be equally true that a government should not be elected - or fail to be re-elected - on the issue of capital punishment.

For the foregoing reasons it would seem that the Solicitor General and his colleagues should oppose Mr. Reynolds' bill.

A. J. MacLeod.

AJM:EGM

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / A: DEPUTY SOLICITOR GENERAL

FROM / DE: ASSISTANT DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ: SECRET - PERSONAL

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: Feb. 9th, 1973

SUBJECT / OBJET: Capital Punishment

You have asked for my opinion on the various alternatives relating to the above, outlined in your memoranda of February 5th and 7th.

First of all, having been absent for much of the debate up till the present, I have not had the benefit of all the discussions which have gone on and the comments made below therefore, are offered with this reservation.

Possible Alternatives

i. A minimum sentence before release imposed by the Criminal Code of 10, 15, 20 or 25 years. The appropriate minimum sentence may vary according to the needs of the individual and the facts of the crime. It would appear to be impossible to legislate in advance for all contingencies;

ii. A minimum sentence imposed by the trial judge, either within a range of 10 to 25 years, or without limits. A trial judge may not be in a position at the time of conviction to determine what the appropriate release date should be;

iii. A recommendation by the trial judge of a minimum sentence, either in all cases or in those cases for which he sees fit. Recommendations in all cases have been preposed by the Scottish Committee under Lord Armstrong, CMND 5137. Optional recommendations is the present British System (Sec. 1 sub-sec. 2 of the Murder (abolition of death penalty) Act 1965 (c71.)

The 12th report of the Criminal Law Revision Committee recommended a continuation of this system. The disadvantage of making recommendations in every case is that in some cases the trial judge may not be in a position to say what the minimum sentence should be at the time of sentencing. Secondly, if there were recommendations in every case, some would be for shorter sentences and would have little deterrent effect. If a Judge were required to make recommendations in every case there would be some serious cases where he would be obliged to make recommendations of such long minimum sentences that no rehabilitative program could be organized for the prisoner.

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iv. No release without the approval of the sentencing judge, a member of the judiciary, or three quarters or all the members of the Parole Board.

The 1965 English law requires the Home Secretary to consult the trial judge, if available, Lord Chief Justice and the Parole Board which has three High Court Judges on it, before releasing a life sentence prisoner on license.

The Hugessen Report recommends that one member of its Regional Release Board should be a Judge, since in Canada there are no appeals to the Supreme Court on sentence.

(Goldhor vs the Queen - 1925 CR 209 - except on a sentence of death, the appropriate Canadian Judicial authority to consult would be either the Chief Justice of the Supreme Court or the Chief Justice of the Court of Appeal of the province where the prisoner who received the life sentence was convicted.)

Temporary Absence

All temporary absence programs for rehabilitative purposes should be coordinated with the release date of the inmate. That is to say if the minimum sentence is ten years, there should be no release until the end of the ten years. Furthermore, Hugessen, at page 61, recommends total abolition of temporary absence for rehabilitative reasons and its replacement by temporary parole.

Conclusions

Minimum sentence whether imposed by the Criminal Code, by regulation or by the trial judge for too long a period at best will be unrelated to the rehabilitation of the prisoner and may well hamper it. It will also cause discipline problems in institutions which could be embarassing to authorities. The most satisfactory guarantee against too early a release of those on life sentences is a properly composed release decision-making authority. Whether the Hugessen Report is implemented or not, the release of those serving life sentences should come under more careful and more special scrutiny, either of the judiciary, the police, the release authority, Cabinet, or perhaps all.

The closer involvement of the judiciary in the parole decision would satisfy the public concern that the Parole Board is thwarting the Court's decision. It would also permit the withdrawal of Cabinet from the process, a move which would be welcome at least by the Cabinet.

.... 3

Finally, if Cabinet is to continue to act as a Court of Appeal, some guidelines would be useful in helping it make decisions on cases.

In addition, more research is required on determination or identification of the dangerous offender and also on more scientific prediction techniques for the Parole Board.

B.C. Hofley.

(dictated by Mr. Hofley and forwarded in his absence)

141-206

File Classer

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / A: THE ASSISTANT DEPUTY SOLICITOR GENERAL

FROM / DE: Special Assiatant

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: February 13, 1973.

SUBJECT / OBJET: Alternatives to Bill C-2

1. A minimum sentence before release, imposed by the Criminal Code, of 10, 15, 20 or 25 years. This is the system in France. The Code of Criminal Procedure s. 729(3) imposes a 15 year minimum sentence before parole is possible. Before 1958, when this section was enacted, parole was not possible for those serving life sentences although commutation of sentence was possible. From 1958 - 68 there have been no paroles granted in France to those serving life sentences, p. 130, "La libération conditionnelle depuis le code de procédure pénale", Anne Besançon, 1970. Ms. Besançon comments that the possibility of parole after 15 years for those serving life sentences is not an effective rehabilitative measure because obviously too delayed.

2. A minimum sentence imposed by the trial judge, either within a range of 10 - 25 years, or without limits. However, the trial judge may not be in a position at the time of conviction to determine what the appropriate release date should be.

3. A recommendation by the trial judge of a minimum sentence, either in all cases, or in those cases for which he sees fit. Recommendations in all cases have been proposed by the Scottish Committee under Lord Emslie CMND. 5137. Optional recommendations is the present British System, s. 1(2) of the Murder(Abolition of Death Penalty) Act 1965, (c. 71). The Twelfth Report of the Criminal Law Revision Committee recommended a continuation of this system. The disadvantage of making recommendations in every case is that in some cases the trial judge may not be in a position to say what the minimum sentence should be at the time of sentencing. Secondly, if there were recommendations in every case, some of the recommendations would be for shorter sentences and would have little deterrent effect. If a judge were required to make a recommendation in every case, there would be some serious cases where he would feel obliged to make recommendations of such a long minimum sentence that no rehabilitative program could ever be organized for the prisoner. Recommendations made in comparatively few cases serve the useful purpose of allowing courts to emphasize the deterrent effect of the sentence in more serious cases.

4. No release without the approval of the sentencing judge, a member of the judiciary, or ¾ or all the members of the Parole Board. The 1965 English Law requires the Home Secretary to consult with the trial judge, if available, the Lord Chief Justice, and the

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Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À

FROM / DE

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE – N/RÉFÉRENCE

YOUR FILE – V/RÉFÉRENCE

DATE

SUBJECT / OBJET

Parole Board, before releasing a life sentence prisoner on license. The Hugessen Report recommends that one member of its Regional Release Board should be a judge. Since in Canada there are no appeals to the Supreme Court of Canada on sentence, Goldhar v. the Queen (1959), 125 C.C.C. 209, except on a sentence of death, s.619 Criminal Code, the appropriate Canadian judicial authority to consult would be either the Chief Justice of the Supreme Court or the Chief Justice of the Court of Appeal of the Province where the prisoner who received the life sentence was convicted.

TEMPORARY ABSENCE

Any temporary absence programme for rehabilitative purposes should be coordinated with the release date of inmate. The Hugessen Report , on page 61, recommends total abolition of temporary absences for rehabilitative reasons and its replacement by temporary parole. i.e., if an inmate has a 10 year minimum, his release program should not start 2 years after sentencing.

CONCLUSIONS

Minimum sentence whether imposed by the Criminal Code, by regulation, or by trial judges, if for too long a period, at best will be unrelated to the rehabilitation of the prisoner, and may well hamper it. The most satisfactory guarantee against too early a release of those on life sentences is a properly composed release decision-making authority. Whether the Hugessen

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Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À

FROM / DE

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE – N/RÉFÉRENCE
YOUR FILE – V/RÉFÉRENCE
DATE

SUBJECT
OBJET

Report is implemented or not the release of those serving life sentences should come under more careful and more special scrutiny either by the judiciary, the police, the release authority, cabinet or perhaps by all.

David Matas

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

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: THE ASSISTANT DEPUTY SOLICITOR GENERAL

DM SM SOL GEN FEB 13 4 00 PM

DOSSIER

FROM / DE: Special Assiatant

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: February 13, 1973.

SUBJECT / OBJET: Alternatives to Bill C-2

1. A minimum sentence before release, imposed by the Criminal Code, of 10, 15, 20 or 25 years. This is the system in France. The Code of Criminal Procedure s. 729(3) imposes a 15 year minimum sentence before parole is possible. Before 1958, when this section was enacted, parole was not possible for those serving life sentences although commutation of sentence was possible. From 1958 - 68 there have been no paroles granted in France to those serving life sentences, p. 130, "La libération conditionnelle depuis le code de procédure pénale", Anne Besançon, 1970. Ms. Besançon comments that the possibility of parole after 15 years for those serving life sentences is not an effective rehabilitative measure because obviously too delayed.

2. A minimum sentence imposed by the trial judge, either within a range of 10 - 25 years, or without limits. However, the trial judge may not be in a position at the time of conviction to determine what the appropriate release date should be.

3. A recommendation by the trial judge of a minimum sentence, either in all cases, or in those cases for which he sees fit. Recommendations in all cases have been proposed by the Scottish Committee under Lord Emslie CMND. 5137. Optional recommendations is the present British System, s. 1(2) of the Murder(Abolition of Death Penalty) Act 1965, (c. 71). The Twelfth Report of the Criminal Law Revision Committee recommended a continuation of this system. The disadvantage of making recommendations in every case is that in some cases the trial judge may not be in a position to say what the minimum sentence should be at the time of sentencing. Secondly, if there were recommendations in every case, some of the recommendations would be for shorter sentences and would have little deterrent effect. If a judge were required to make a recommendation in every case, there would be some serious cases where he would feel obliged to make recommendations of such a long minimum sentence that no rehabilitative program could ever be organized for the prisoner. Recommendations made in comparatively few cases serve the useful purpose of allowing courts to emphasize the deterrent effect of the sentence in more serious cases.

4. No release without the approval of the sentencing judge, a member of the judiciary, or ¾ or all the members of the Parole Board. The 1965 English Law requires the Home Secretary to consult with the trial judge, if available, the Lord Chief Justice, and the

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Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À

FROM / DE

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

DATE

SUBJECT / OBJET

Parole Board, before releasing a life sentence prisoner on license. The Hugessen Report recommends that one member of its Regional Release Board should be a judge. Since in Canada there are no appeals to the Supreme Court of Canada on sentence, Goldhar v. the Queen (1959), 125 C.C.C. 209, except on a sentence of death, s.619 Criminal Code, the appropriate Canadian judicial authority to consult would be either the Chief Justice of the Supreme Court or the Chief Justice of the Court of Appeal of the Province where the prisoner who received the life sentence was convicted.

TEMPORARY ABSENCE

Any temporary absence programme for rehabilitative purposes should be coordinated with the release date of inmate. The Hugessen Report , on page 61, recommends total abolition of temporary absences for rehabilitative reasons and its replacement by temporary parole. i.e., if an inmate has a 10 year minimum, his release program should not start 2 years after sentencing.

CONCLUSIONS

Minimum sentence whether imposed by the Criminal Code, by regulation, or by trial judges, if for too long a period, at best will be unrelated to the rehabilitation of the prisoner, and may well hamper it. The most satisfactory guarantee against too early a release of those on life sentences is a properly composed release decision-making authority. Whether the Hugessen

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TO / À

FROM / DE

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OUR FILE – N/RÉFÉRENCE

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DATE

SUBJECT
OBJET

Report is implemented or not the release of those serving life sentences should come under more careful and more special scrutiny either by the judiciary, the police, the release authority, cabinet or perhaps by all.

David Matas

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 / À: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

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

SUBJECT / OBJET: Statistics - Crimes of Violence and related Sentencing Practice

Pursuant to your recent request, you will find attached the following:

1) Modification of eight tables in the "Fattah Report" relating to Canada totals for crimes of violence, to update them to include data for 1971.

The additional data was released by Statistics Canada to us in advance of its publication;

2) Tabulations to enable a response to the question of whether there are any significant trends in sentencing practice relating to violent offences over the past few years.

Data has been compiled to enable analysis of this question at two points in the Criminal Justice System:

(a) Table 1 is to catch sentencing practice at the court level to enable a determination of possible trends between incarcerative and non-incarcerative sanctions, where law permits the latter, and within any category of sanction over the years;

(b) Table 2 provides a constant format for analysis of sentence length at admission to penitentiary following conviction for selected violent offences.

In neither case would any significant trends seem apparent.

(c) Table 3 provides the number of murders reported by the police to Statistics Canada;

(d) Table 4 provides the number of persons charged, total charges, result of charges and sentences of convicted persons by selected indictable offences;

(e) Table 5, which is entitled "Measures of central tendencies of sentences awarded in 1970 and selected earlier 12-month periods, time served prior to parole release, for offences involving violence.

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It should be noted that Table 5 provides only partial satisfaction to the question of the "average time served by year by offence". This information is not available for time served within provincial institutions or federal penitentiaries unless release was by way of National Parole. For the latter, the most recent year on which final statistics are available is 1970, as shown in Table 5.

Additional information will be forthcoming regarding the number of hangings and commutations, minimum and maximum penalties and recidivism rates.

ORIGINAL SIGNED BY
R. TASSE

Roger Tassé

RT/hl

Enc.

CANADA

INQUIRY OF MINISTRY
DEMANDE DE RENSEIGNEMENTS AU GOUVERNEMENT

PREPARE 10 COPIES IN ENBLISH AND FRENCH MARKED "TEXT" AND "TRANSLATION"
PREPARER 10 COPIES EN ANGLAIS ET FRANCAIS INSCRIVANT "TEXTE" ET "TRADUCTION"

QUESTION NO. 847

By / *De*
Mr. Fortin

Order of Business and Notices No. – *Ordre des Travaux et Avis N°*	Page	Date
27	vii	9 February 1973

Subject – *Sujet*
Commutation of death sentences and parole of offenders sentenced to life imprisonment

Reply by the Solicitor General
Réponse par le Solliciteur Général
Signature
Minister or Parliamentary Secretary
Ministre ou Secrétaire Parlementaire

QUESTION

1. For each year 1966 to 1972, how many individuals were sentenced to be hanged in Canada?

2. In how many cases, each year, were these sentences commuted to life imprisonment?

3. Among individuals sentenced to life imprisonment during these years (a) how many were paroled (b) on what dates were they paroled (c) how many years had they spent in prison (d) how many became repeat offenders?

REPLY – *RÉPONSE*

Text *Texte* [X] Translation *Traduction* [ ]

For the Ministry of the Solicitor General:

1 and 2: During the past seven calendar years, the number of individuals sentenced to be hanged in Canada and the number of commutations to life imprisonment were as follows:

Year	Disposition of capital cases: Sentenced to death	Disposition of capital cases: Commuted*	Capital cases considered by Governor in Council: Cases	Capital cases considered by Governor in Council: Commuted
1966	10	10	4	4
1967	8	8	5	5
1968	1	1	18	18
1969	-	-	1	1
1970	3	3	1	1
1971	-	-	1	1
1972	2	-	1	1

* These figures are given according to the year of trial, not by the date of commutation.

3. (a) three, whose nature of offence, sentence and age on the date of conviction were as follows:

Case 1: Age 77, non-capital murder, life imprisonment;
Case 2: Age 59, non-capital murder, life imprisonment;
Case 3: Age 18, capital murder, death commuted to life imprisonment.

(b) Case 1: Paroled on 22 August 1969, by exception, at the age of 80;
Case 2: Paroled on 30 March 1970, by exception, at the age of 61;
Case 3: Paroled on 21 April 1970, by exception, at the age of 22.

(c) Case 1: 2 years 9 months and 4 days;
Case 2: 3 years and 20 days;
Case 3: 4 years 1 month and 25 days.

(d) Case 1: No repeat offence, died on parole in 1970;
Case 2: No repeat offence, died on parole in 1972;
Case 3: No repeat offence to date, still on parole.

CANADA

INQUIRY OF MINISTRY
DEMANDE DE RENSEIGNEMENTS AU GOUVERNEMENT

PREPARE 10 COPIES IN ENBLISH AND FRENCH MARKED "TEXT" AND "TRANSLATION"
PREPARER 10 COPIES EN ANGLAIS ET FRANCAIS INSCRIVANT "TEXTE" ET "TRADUCTION"

QUESTION NO. 847

By — *De*

M. Fortin

Order of Business and Notices No. — *Ordre des Travaux et Avis N°*	Page	Date
27	vii	le 9 février 1973

Subject — *Sujet*

Commutation de la peine de mort et libération conditionnelle des personnes condamnées à l'emprisonnement à vie

Reply by the Solicitor General
Réponse par le Solliciteur Général

Signature
Minister or Parliamentary Secretary
Ministre ou Secrétaire Parlementaire

QUESTION

1. Pour chacune des années de 1966 à 1972, combien de personnes ont été condamnées à la pendaison au Canada?

2. Dans combien de cas chaque année ces sentences ont-elles été commuées en emprisonnement à vie?

3. Parmi les personnes condamnées à l'emprisonnement à vie au cours de ces années, a) combien ont été libérées conditionnellement, b) quand l'ont-elles été, c) après combien d'années d'emprisonnement et d) y a-t-il eu rédicive?

REPLY — *RÉPONSE*

Text *Texte* ☐ Translation *Traduction* [X]

Pour le Ministère du Solliciteur général:

1 et 2: Voici le nombre de personnes condamnées à la pendaison au Canada et le nombre de commutations en emprisonnement à vie, au cours des sept dernières années:

Année	Sort réservé aux condamnés à mort: Condamnations à mort	Commutations*	Condamnations à mort examinées par le Gouverneur général en Conseil: Nombre de cas	Commutations
1966	10	10	4	4
1967	8	8	5	5
1968	1	1	18	18
1969	-	-	1	1
1970	3	3	1	1
1971	-	-	1	1
1972	2	-	1	1

* ces chiffres s'attachent à l'année de condamnation, non pas à la date de la commutation.

3. (a) Trois. Leurs délits, sentences et âges à la date de la condamnation étaient:

Cas No. 1: l'âge: 77 ans; meurtre non-qualifié, l'emprisonnement à vie.
Cas No. 2: l'âge: 59 ans; meurtre non-qualifié, l'emprisonnement à vie.
Cas No. 3: l'âge: 18 ans; meurtre non-qualifié, peine de mort commuée en emprisonnement à vie.

(b) Cas No. 1: libéré sous condition le 22 août 1969, par exception à l'âge de 80 ans.
Cas No. 2: libéré sous condition le 30 mars 1970, par exception à l'âge de 61 ans.
Cas No. 3: libéré sous condition le 21 avril 1970, par exception à l'âge de 22 ans.

(c) Cas No. 1: 2 ans, 9 mois et 4 jours
Cas No. 2: 3 ans et 20 jours
Cas No. 3: 4 ans, 1 mois et 25 jours

(d) Cas No. 1: aucune récidive, décédé en 1970 pendant la libération conditionnelle
Cas No. 2: aucune récidive, décédé en 1972 pendant la libération conditionnelle
Cas No. 3: aucune récidive, jusqu'ici; toujours en libération conditionnelle

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

DM SM
SOL GEN
FEB 12 1973
DOSSIER

TO / A: Mr. Sid Roberts
Director of Information Services

FROM / DE: Dr. Terry McGrath
Minister's Office

SECURITY CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	
YOUR FILE - V/RÉFÉRENCE	
DATE	February 9, 1973

SUBJECT / OBJET: EDITORIAL COMMENT ON CAPITAL PUNISHMENT

Thank you for the information on the procedure followed in distributing newspapers in the Department. I shall contact the Central Registry as you suggested.

File / Classer

Would it be possible for your Department to put together a sampling of editorial comment from across the country on the current capital punishment debate and Bill C-2 in particular? We have had requests for such information in this office and it would also be very informative for our Minister. Could your staff handle this task by Tuesday morning, February 14?

Dr. Terry McGrath

c.c.
Mr. Warren Allmand, Solicitor General
Mr. Roger Tassé, Deputy Solicitor General
Mr. Zavie Levine, Executive Assistant
Mr. Jim McDonald, Special Assistant

CGSB STANDARD FORM 224 7540-21-865-6699 FORMULE NORMALISÉE 224 C

CONFIDENTIAL

DEPARTMENT OF THE SOLICITOR GENERAL

CANADA

MINISTÈRE DU SOLLICITEUR GÉNÉRAL

CONFIDENTIAL

POLICE AND SECURITY PLANNING AND ANALYSIS GROUP

CENTRE DE PLANIFICATION ET D'ANALYSE SUR LA POLICE ET LA SÉCURITÉ

February 7, 1973.

M E M O R A N D U M

TO: DEPUTY SOLICITOR GENERAL

FROM: ASSISTANT DEPUTY MINISTER (POLICE AND SECURITY)

RE: YOUR MEMORANDUM OF FEBRUARY 5, 1973 ON CAPITAL PUNISHMENT

The alternatives and variations have been examined by the PSPG as a group. Comments as requested are attached.

You may wish to consider our Alternatives A and B in addition. Personally, I am attracted by Alternative B which suggests a method of dealing collectively on the sentence to be passed. I understand a similar type of procedure is used in certain courts in Germany.

Robin Bourne

Att.

CONFIDENTIAL

001462

Government of Canada / Gouvernement du Canada

CONFIDENTIAL - CONFIDENTIEL

MEMORANDUM **NOTE DE SERVICE**

TO / À: HEAD, PSPG

FROM / DE: J.A.L. Cloutier

SECURITY - CLASSIFICATION - DE SÉCURITÉ: CONFIDENTIAL
OUR FILE - N/RÉFÉRENCE: 25/
YOUR FILE - V/RÉFÉRENCE:
DATE: February 6, 1973

SUBJECT / OBJET: ALTERNATIVES TO CAPITAL PUNISHMENT

Our meeting to discuss Mr. Tassé's alternatives and variations found us divided equally between retentionists and non-retentionists. We sought nevertheless to attack the question within the framework of alternatives outlined. Against the background of our divergent opinions, a conspectus, attached hereto, has been prepared by the non-retentionists.

J.A.L. Cloutier

CONFIDENTIAL - CONFIDENTIEL

001463

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

CONFIDENTIAL

COMMENTS ON ALTERNATIVES

First Alternative

Pro: nil

Con: - Doesn't take into consideration merits and differences of individual cases.

- Limits the flexibility of the court.

- Is counter to the spirit of rehabilitation.

Second Alternative

Pro: - Only advantage is distinction between specially serious murders and other murders.

Con: - As is under alternative 1.

Third Alternative

Pro: - Further clarifies the distinction between "specially serious" murders and other murders by incorporating a list of contemporary types of murder.

Con: - As is listed under alternative 1.

- Sentence should be based on the fact that a human life has been taken, without any consideration given to the victim's occupation, rank, status, etc. To do so is counter to the axiom that all men are equal before the law. The injection of the emotional aspects to be eliminated as much as possible.

- As stated, the enormous complexity of covering all contingent offenses to be covered.

Fourth Alternative

Pro: - Would leave court flexibility but much greater flexibility would result if it were the judge and jury deciding sentence.

.../2

- More in spirit of rehabilitation, as individual nature of each case is assessed.

- No mandatory period of sentence duration - more flexibility without arbitrary constraints governing individual case.

- The composition of the jury will reflect changing attitudes and values in our society. Immediate societal attitudes will influence sentencing.

Con: - At present there is no formal training or uniformity of qualifications of judges to deal with such a situation.

- In that the judge is responsible for court-room procedure, there is no guarantee as to his objectivity in a case. At present neither the prosecutor nor the defence has the opportunity to cross-examine or challenge the judge.

First Variation

Pro: - The judge is given a very limited degree of flexibility in determining the severity of the sentence.

Con: - All reasons cited above.

Second Variation

Pro: - Same as in first variation.

Con: - All reasons cited above.

Third Variation

Pro: - Same as in first variation.

Con: - All reasons cited above.

Suggested Alternative A

Mandatory sentence of 25 years, however, after a period not exceeding 5 years possibility of being released on parole. With regard to "specially serious" murders the period before consideration of parole would be 10 years.

.../3

In neither case would the parole necessarily continue for the duration of the original sentence. A review of parole will follow every 3 years if the parole is turned down after the initial 5 and 10 year periods respectively.

Suggested Alternative B

The judge and jury, with the possible inclusion of a classification's officer who has followed the case, plus the defence and prosecuting lawyers should decide sentence. There could be no minimum or maximum mandatory sentence.

Individual cases must be the point of concern in sentencing. Rehabilitation must be of paramount concern to the courts. However, the aspect of balancing rehabilitation with the protection of society will be injected by the jury's involvement with sentencing.

In this manner the duration and nature of sentences will reflect both social attitudes and their variations over time, as well as the individual nature of each case.

The judge and lawyers involved would supply the necessary law and precedents involved in such a sentencing process.

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: MR. R. BOURNE

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
SECRET - PERSONAL
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE
February 5, 1973

SUBJECT / OBJET: Capital Punishment

1. The Solicitor General has asked that consideration be given to possible alternatives to Bill C-2, now before the House of Commons dealing with Capital Punishment.

2. This memorandum briefly outlines a number of such alternatives. Your comments as soon as may be possible would be appreciated.

3. Although a number of amendments could possibly be made to Bill C-2 as it now stands, to deal for example with the conditions of release of a person sentenced to imprisonment for life (such as, for instance, a minimum period of mandatory confinement, a unanimous decision of the Parole Board, etc.), the alternatives mentioned below would result in the complete abolition of capital punishment in all cases of murder regardless of the nature of the act, the identity of the victim, etc.

4. A first alternative would incorporate in the Criminal Code a statutory prohibition against the release by the Parole Board within fifteen years after conviction, of a person convicted of murder.

5. A second alternative would incorporate into the Criminal Code the 10-year rule against release by the Parole Board, which now prevails by virtue of the present regulations under the Parole Act. However, a minimum 20-year period would be provided for within which no parole may be granted to persons convicted of "specially serious" murders. The existing definition of capital murder could be used for this purpose.

6. A third alternative would be the same as #2 above, but the kind of murders to which the 20-year rule would apply would be different. This could include, for instance, murders in the course of aircraft hijacking, the killing of persons held as hostages, the killing of kidnapped persons, etc. The problem here, of course, is the making of the list of offences which would result in the application of the 20-year rule.

7. A fourth alternative would give to the trial judge (possibly with the assistance of the jury) a role in the setting of the minimum mandatory period of confinement of a person convicted of murder.

8. A first variation of this alternative would require the trial judge to fix a time, between 10 years and 25 years following conviction, before which a convicted person may not be released on parole. Such a requirement would apply in all cases of murder.

9. A second variation of this alternative would confer a discretion on the trial judge to fix a time between 10 years and 25 years, failing the exercise of which the 10-year rule could be made to apply.

10. A third variation of this alternative would be to provide that 25 years of confinement before eligibility for parole would be the normal rule, except that the trial judge would have a discretion to fix a lesser number of years but not less than 10, before which parole may not be granted.

11. With respect to all the alternatives mentioned above, it would be possible to provide that after the mandatory period of confinement has expired, a person convicted of murder could be released on parole only if all of the members or three-quarters of the members of the Parole Board agree to such a release.

12. Regarding all the alternatives mentioned above, there could be an added provision for a 5-year "trial period" similar to that provided for in the Bill now before the House.

13. Finally, it seems to me that we should consider very carefully what the position should be with respect to temporary absences under the Penitentiary Act in the case of convicted persons who will be required by law to be kept in confinement for a minimum period of time, be it 10 years or 25 years. It seems to me that the position in these cases should be that no temporary absences for rehabilitative purposes should be granted during the mandatory period of confinement and that temporary absences for medical or humanitarian purposes should be granted only under escort. In any event, it seems that we should avoid being placed in a position where we would have to resort to the Governor in Council on a more or less regular basis for the purpose of getting authority for temporary absences.

14. This matter is urgent and I would appreciate it if you would give me the benefit of your comments on each alternative mentioned above. It seems to me that it would be especially important for the Penitentiary Services and the Parole Services to consider the possible effects that these alternatives could have on departmental correctional programs.

R.T.

Roger Tassé

141-386

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

File Closer

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE – N/RÉFÉRENCE

YOUR FILE – V/RÉFÉRENCE

DATE: February 7, 1973

TO / À: DEPUTY SOLICITOR GENERAL

FROM / DE: INGER HANSEN
LEGAL OFFICER

SUBJECT / OBJET: Capital Punishment

Attached are:

1) Actual length of incarceration of prisoners subject to an alternative sanction (in years) from Capital Punishment - New Material 1965-1972, and

2) Life Sentences in Commonwealth Countries, United States and Europe, from the Royal Commission on Capital Punishment 1949-1953 Report (U.K.)

as requested.

Original Signed by
I. HANSEN

Atts.

INGER HANSEN

001469

APPENDIX 6*

TABLE 28

ACTUAL LENGTH OF INCARCERATION OF PRISONERS SUBJECT TO AN ALTERNATIVE SANCTION (IN YEARS)

Country	Average	Median	Minimum	Maximum
Afghanistan	15–20	—	—	—
Australia	15–16	—	—	—
Central African Republic	—	15[a]	10	20
Chad	20	10	5	20
Cyprus	11.5	20	—	20
Ivory Coast	14	20	5	natural life
Japan	13.9	10[b]	9.1	28.5
Malawi	10	10	10	15
Malta	14	—	—	—
Nigeria	14	12	12	16
Republic of Vietnam	—	—	2	10
Trinidad	13.25	13	10.8	16.75
United Kingdom	8.7	9	.2	22
Upper Volta	15	20	15	25

[a]This is the median length for "temporary forced labour"; for "perpetual forced labour" the median length is twenty-five years.
[b]The Japanese figure excludes offenders receiving an alternative penalty by virtue of their age; for that group the median length is seven years.
—*Capital Punishment: Developments 1961 to 1965*, United Nations, p. 32
*Appendix to Chapter 8—An alternative sanction.

TABLE A

Life Sentences in Commonwealth Countries

Country or State	Number of Cases	Period	Length of terms served			Remarks
			Shortest	Actual Sentences Average (A) or Median (M)	Longest	
Australia						
New South Wales	—	—	—	Slightly over 20 years(A)	39 years	
Queensland ...	—	—	—	—	25½ years	Longest period of any prisoner serving life sentence in 1949.
South Australia...	(*a*) 14	1918–39	1 year 1 month	10 years 3 months (M)	17 years 11 months	
	(*b*) 4	1918–39	4 years 8 months	9 years 2 months (A)	13 years 8 months	
Tasmania ...	(*a*) 3	Released 1937–48	11 years 10 months	14 years 3 months (A)	15 years 10 months	
Victoria	—	—	—	—	—	No information as to actual terms served. Prisoner may be released after 20 years if conduct has been good.
Western Australia	(*a*) 6	Sentenced 1918–39	3 years 1 month	10 years (A)	20 years	
	(*b*) 3	Sentenced 1918–39	6 years 8 months	9 years 8 months (M)	11 years 2 months	
Canada	(*a*) 42	Released 1923–39	1 year 3 months	12 years 7 months (M)	20 years 2 months	Length of detention shorter in earlier part of the period.
	(*b*) 46	Released 1920–39	2 years 2 months	10 years 9 months (M)	18 years 10 months	Length of detention shorter in earlier part of the period.
Ceylon	—	—	—	12 years 6 months (A)	—	
India	—	—	—	15 years (A)	—	Average shown is notional length less maximum ordinary remission.
New Zealand ...	(*a*) 7	Released 1918–39	10 years	14 years 7 months (M)	21 years 11 months	
	(*a*) 3	Released 1945–49	10 years	12 years 3 months (M)	17 years 8 months	
	(*b*) 4	Released 1932–39	12 years	13 years 10 months (M)	32 years 7 months	
Pakistan (Province of Sind).	(*a*) 26	1918–49	Less than 6 years	8–9 years (M)	12–14 years	
	(*c*)388	1918–49	Less than 6 years	9–12 years (M)	Over 18 years	
	(*d*) 17	1918–49	Less than 6 years	9–12 years (M)	Over 18 years	
Southern Rhodesia	—	—	—	—	—	Each case considered after 15 years.
South Africa ...	(*a*) —	1924–39	9·4 years (1939)	12·5 years (1926) (M)	15·9 years (1924)	Figures are average sentences of those released in the year shown.
	(*b*) —	1928 and 1931	12·2 years (1931)	—	13·6 years (1928)	Figures are average sentences of those released in the year shown.

(*a*) Commuted Death Sentences. (*b*) Original Life Sentences. (*c*) Original Life Sentences for Murder, (*d*) Original Life Sentences for offences other than Murder.

TABLE B

TABLE B

Life Sentences in the United States of America

Country or State	Number of Cases	Period	Length of terms served			Remarks
			Shortest	Actual Sentences Average (A) or Median (M)	Longest	
1. The following figures apply to prisoners released over the whole of the United States in 1939 and 1946:						
	433	Released in 1939	—	11 years 10 months (M)	—	
	683	Released in 1946	—	10 years 7 months (M)	—	
2. The following particulars relate to individual States:—						
California ...	—	Released 1945–49	—	14 years (A)	—	Sentenced for first-degree murder.
	—	Released 1945–49	—	11 years (A)	—	Sentenced as habitual offenders. Life sentence prisoners are eligible for release on parole after serving 7 years.
Massachusetts ...	5*	1900–50	6 years	28 years (A)	41 years	Commuted Death Sentences.
	183	1900–50	1–5 years	About 17 years (A)	Over 40 years	Sentenced for second-degree murder.
Michigan ...	—	Released 1942–48	—	17 years 4 months (A)	—	Sentenced for murder.
	—	Released 1942–48	—	13 years 6 months (A)	—	Sentenced for offences other than murder. Life sentence prisoners sentenced for offences other than first-degree murder are eligible for release on parole after serving 10 years.
Missouri... ...	—	—	—	About 17 years (A)	—	
New Jersey ...	63	Released 1939–50	8 years	16 years 10 months (A)	26 years	Sentenced for murder.
	35	Released 1949–51	14 years	19 years 7 months (A)	25 years	Sentenced for murder.
	3	Released 1939–50	2 years 10 months	6 years 3 months (A)	8 years	Sentenced for offences other than murder. Life sentence prisoners are eligible for parole after serving 14 years 8 months.
New York ...	11	Released 1944–49	12 years 7 months	24 years 5 months (M)	26 years 8 months	Release after pardon or commutation.
Pennsylvania ...	166*	Released 1900–April 1951	2 years	15 years (A)	30 years	Prisoners serving original or commuted life sentences in Eastern State Penitentiary.
Wisconsin ...	589	1849–1947	5 days	12 years 1 month (A)	54 years 3 months	Life sentence prisoners are eligible for parole after serving 11 years 3 months.

Note: All sentences are original life sentences except for those marked *.

TABLE C

Life Sentences in Europe

Country or State	Number of Cases	Period	Length of terms served			Remarks
			Shortest	Actual Sentences Average (A) or Median (M)	Longest	
Belgium	(*a*) — (*b*) —	— —	— —	18 years (A) 14 years (A)	47 years —	Life sentence prisoners may be released after serving 10 years or, if recidivists, 14 years.
Denmark	(*a*) 39 20	Released 1931–47 Released 1915–47	12 years About 10 years	20 years (M) 15–16 years (A)	34 years About 21 years	The average period is being reduced to 14 years.
France	—	—	—	—	—	Life sentence prisoners are not normally released until they have served 10 years.
Italy	—	—	—	—	—	Prisoners usually released at age of 70 or after serving 30 years.
Netherlands ...	—	—	—	16½ years (A)	One case not likely to be released before 40 years	Normal practice to commute life sentence to a sentence of 25 years imprisonment when the prisoner has served 15 years; allowing for remission, this means that prisoner becomes eligible for release after serving 16½ years. During the years 1918–48, 8 persons were sentenced to imprisonment for life for murder and 7 for aggravated homicide.
Norway	17 6 3	Released 1900–47 Released 1918–39 Released 1945–49	7–9 years 10 years 8 years	11½ years (A) — —	15–16 years 14 years 14 years	Life sentence prisoners are eligible for provisional release after serving 20 years. In fact, they are invariably pardoned before and no prisoner released during this century has served more than 16 years.

Sweden	(*c*) 35 (*d*) 25 (*c*) 5 (*d*) 2	Released 1918–39 Released 1918–39 Released 1945–49 Released 1945–49	10–11 years 2–3 years 9–10 years 5–6 years	17–18 years (M) 16–17 years (M) 14–15 years (M) —	26–27 years 24–25 years 28–29 years 16–17 years	The length of a life sentence is being reduced to 10 years or less. Four prisoners sentenced for a gang murder were recently released after serving 7½, 9, 10 and 10½ years.
Switzerland ...	—	—	—	—	—	Prisoners may be released conditionally after serving 15 years.

(*a*) Commuted death sentence. (*b*) Original life sentence. (*c*) Life sentence for murder. (*d*) Life sentence for offence other than murder.

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

TO / À: DEPUTY SOLICITOR GENERAL

FROM / DE: INGER HANSEN
LEGAL OFFICER

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE – N/RÉFÉRENCE
YOUR FILE – V/RÉFÉRENCE
DATE: February 7, 1973

SUBJECT / OBJET: Capital Punishment

F.A. 150.

Attached are:

1) Actual length of incarceration of prisoners subject to an alternative sanction (in years), from Capital Punishment - New Material 1965-1972, and

2) Life Sentences in Commonwealth Countries, United States and Europe, from the Royal Commission on Capital Punishment 1949-1953 Report (U.K.)

as requested.

Atts.

Inger Hansen
INGER HANSEN

001475

APPENDIX 6*

TABLE 28

ACTUAL LENGTH OF INCARCERATION OF PRISONERS SUBJECT TO AN ALTERNATIVE SANCTION (IN YEARS)

Country	Average	Median	Minimum	Maximum
Afghanistan	15–20	—	—	—
Australia	15–16	—	—	—
Central African Republic	—	15[a]	10	20
Chad	20	10	5	20
Cyprus	11.5	20	—	20
Ivory Coast	14	20	5	natural life
Japan	13.9	10[b]	9.1	28.5
Malawi	10	10	10	15
Malta	14	—	—	—
Nigeria	14	12	12	16
Republic of Vietnam	—	—	2	10
Trinidad	13.25	13	10.8	16.75
United Kingdom	8.7	9	.2	22
Upper Volta	15	20	15	25

[a]This is the median length for "temporary forced labour"; for "perpetual forced labour" the median length is twenty-five years.
[b]The Japanese figure excludes offenders receiving an alternative penalty by virtue of their age; for that group the median length is seven years.
—*Capital Punishment: Developments 1961 to 1965*, United Nations, p. 32
*Appendix to Chapter 8—An alternative sanction.

TABLE A

Life Sentences in Commonwealth Countries

Country or State	Number of Cases	Period	Length of terms served			Remarks
			Shortest	Actual Sentences Average (A) or Median (M)	Longest	
Australia						
New South Wales	—	—	—	Slightly over 20 years(A)	39 years	
Queensland ...	—	—	—	—	25½ years	Longest period of any prisoner serving life sentence in 1949.
South Australia...	(*a*) 14	1918–39	1 year 1 month	10 years 3 months (M)	17 years 11 months	
	(*b*) 4	1918–39	4 years 8 months	9 years 2 months (A)	13 years 8 months	
Tasmania ...	(*a*) 3	Released 1937–48	11 years 10 months	14 years 3 months (A)	15 years 10 months	
Victoria	—	—	—	—	—	No information as to actual terms served. Prisoner may be released after 20 years if conduct has been good.
Western Australia	(*a*) 6	Sentenced 1918–39	3 years 1 month	10 years (A)	20 years	
	(*b*) 3	Sentenced 1918–39	6 years 8 months	9 years 8 months (M)	11 years 2 months	
Canada	(*a*) 42	Released 1923–39	1 year 3 months	12 years 7 months (M)	20 years 2 months	Length of detention shorter in earlier part of the period.
	(*b*) 46	Released 1920–39	2 years 2 months	10 years 9 months (M)	18 years 10 months	Length of detention shorter in earlier part of the period.
Ceylon	—	—	—	12 years 6 months (A)	—	
India	—	—	—	15 years (A)	—	Average shown is notional length less maximum ordinary remission.
New Zealand ...	(*a*) 7	Released 1918–39	10 years	14 years 7 months (M)	21 years 11 months	
	(*a*) 3	Released 1945–49	10 years	12 years 3 months (M)	17 years 8 months	
	(*b*) 4	Released 1932–39	12 years	13 years 10 months (M)	32 years 7 months	
Pakistan (Province of Sind).	(*a*) 26	1918–49	Less than 6 years	8–9 years (M)	12–14 years	
	(*c*)388	1918–49	Less than 6 years	9–12 years (M)	Over 18 years	
	(*d*) 17	1918–49	Less than 6 years	9–12 years (M)	Over 18 years	
Southern Rhodesia	—	—	—	—	—	Each case considered after 15 years.
South Africa ...	(*a*) —	1924–39	9·4 years (1939)	12·5 years (1926) (M)	15·9 years (1924)	Figures are average sentences of those released in the year shown.
	(*b*) —	1928 and 1931	12·2 years (1931)	—	13·6 years (1928)	Figures are average sentences of those released in the year shown.

(*a*) Commuted Death Sentences. (*b*) Original Life Sentences. (*c*) Original Life Sentences for Murder, (*d*) Original Life Sentences for offences other than Murder.

TABLE B

TABLE B

Life Sentences in the United States of America

Country or State	Number of Cases	Period	Length of terms served			Remarks
			Shortest	Actual Sentences Average (A) or Median (M)	Longest	
1. The following figures apply to prisoners released over the whole of the United States in 1939 and 1946:						
	433	Released in 1939	—	11 years 10 months (M)	—	
	683	Released in 1946	—	10 years 7 months (M)	—	
2. The following particulars relate to individual States:—						
California ...	—	Released 1945–49	—	14 years (A)	—	Sentenced for first-degree murder.
	—	Released 1945–49	—	11 years (A)	—	Sentenced as habitual offenders. Life sentence prisoners are eligible for release on parole after serving 7 years.
Massachusetts ...	5*	1900–50	6 years	28 years (A)	41 years	Commuted Death Sentences.
	183	1900–50	1–5 years	About 17 years (A)	Over 40 years	Sentenced for second-degree murder.
Michigan ...	—	Released 1942–48	—	17 years 4 months (A)	—	Sentenced for murder.
	—	Released 1942–48	—	13 years 6 months (A)	—	Sentenced for offences other than murder. Life sentence prisoners sentenced for offences other than first-degree murder are eligible for release on parole after serving 10 years.
Missouri... ...	—	—	—	About 17 years (A)	—	
New Jersey ...	63	Released 1939–50	8 years	16 years 10 months (A)	26 years	Sentenced for murder.
	35	Released 1949–51	14 years	19 years 7 months (A)	25 years	Sentenced for murder.
	3	Released 1939–50	2 years 10 months	6 years 3 months (A)	8 years	Sentenced for offences other than murder. Life sentence prisoners are eligible for parole after serving 14 years 8 months.
New York ...	11	Released 1944–49	12 years 7 months	24 years 5 months (M)	26 years 8 months	Release after pardon or commutation.
Pennsylvania ...	166*	Released 1900–April 1951	2 years	15 years (A)	30 years	Prisoners serving original or commuted life sentences in Eastern State Penitentiary.
Wisconsin ...	589	1849–1947	5 days	12 years 1 month (A)	54 years 3 months	Life sentence prisoners are eligible for parole after serving 11 years 3 months.

Note: All sentences are original life sentences except for those marked *.

TABLE C

Life Sentences in Europe

Country or State	Number of Cases	Period	Length of terms served			Remarks
			Shortest	Actual Sentences Average (A) or Median (M)	Longest	
Belgium	(*a*) — (*b*) —	— —	— —	18 years (A) 14 years (A)	47 years —	Life sentence prisoners may be released after serving 10 years or, if recidivists, 14 years.
Denmark	(*a*) 39 20	Released 1931–47 Released 1915–47	12 years About 10 years	20 years (M) 15–16 years (A)	34 years About 21 years	The average period is being reduced to 14 years.
France	—	—	—	—	—	Life sentence prisoners are not normally released until they have served 10 years.
Italy	—	—	—	—	—	Prisoners usually released at age of 70 or after serving 30 years.
Netherlands ...	—	—	—	16½ years (A)	One case not likely to be released before 40 years	Normal practice to commute life sentence to a sentence of 25 years imprisonment when the prisoner has served 15 years; allowing for remission, this means that prisoner becomes eligible for release after serving 16½ years. During the years 1918–48, 8 persons were sentenced to imprisonment for life for murder and 7 for aggravated homicide.
Norway	17 6 3	Released 1900–47 Released 1918–39 Released 1945–49	7–9 years 10 years 8 years	11½ years (A) — —	15–16 years 14 years 14 years	Life sentence prisoners are eligible for provisional release after serving 20 years. In fact, they are invariably pardoned before and no prisoner released during this century has served more than 16 years.

Sweden	(*c*) 35 (*d*) 25 (*c*) 5 (*d*) 2	Released 1918–39 Released 1918–39 Released 1945–49 Released 1945–49	10–11 years 2–3 years 9–10 years 5–6 years	17–18 years (M) 16–17 years (M) 14–15 years (M) —	26–27 years 24–25 years 28–29 years 16–17 years	The length of a life sentence is being reduced to 10 years or less. Four prisoners sentenced for a gang murder were recently released after serving 7½, 9, 10 and 10½ years.
Switzerland ...	—	—	—	—	—	Prisoners may be released conditionally after serving 15 years.

(*a*) Commuted death sentence. (*b*) Original life sentence. (*c*) Life sentence for murder. (*d*) Life sentence for offence other than murder.

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: ASSISTANT DEPUTY SOLICITOR GENERAL

FROM / DE: CHIEF, STATISTICAL INFORMATION CENTRE

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	402-2-9
YOUR FILE - V/RÉFÉRENCE	
DATE	February 7, 1973.

SUBJECT / OBJET: Statistics - Crimes of Violence and related Sentencing Practice

The attached material is supplementary to that forwarded on this subject on February 6th, in further compliance with Mr. Tassé's specifications.

It may be noted that Table 5 provides only partial satisfaction with regard to the identification of the "average time served by year by offence". This information is not available for time served within provincial institutions or federal penitentiaries unless release was by way of National Parole. For the latter, the most recent year on which final statistics are available is 1970, as expressed in Table 5.

Mr. Shuster is preparing material to meet the balance of the requirement: number of hangings and commutations, minimum and maximum penalties and recidivism rates.

John F. Townesend.

Att.

001481

TABLE 3

NUMBER OF MURDERS REPORTED BY THE POLICE TO STATISTICS CANADA (1) AND HOMICIDAL DEATHS (2), CANADA, 1921-1971

YEAR	MURDERS REPORTED TO STATISTICS CANADA	HOMICIDAL DEATHS
1921	-	50
1922	-	82
1923	-	76
1924	-	98
1925	-	98
1926	-	126
1927	-	124
1928	-	150
1929	-	182
1930	-	214
1931	-	172
1932	-	158
1933	-	147
1934	-	142
1935	-	153
1936	-	137
1937	-	138
1938	-	127
1939	-	124
1940	-	148
1941	-	130
1942	-	113
1943	-	125
1944	-	106
1945	-	152
1946	-	146
1947	-	146
1948	-	155
1949	-	172
1950	-	113
1951	-	145
1952	-	136
1953	-	152
1954	125	157
1955	118	158
1956	131	171
1957	129	165
1958	153	198
1959	141	167
1960	190	244
1961	185	211
1962	217	249
1963	215	240
1964	218	238
1965	243	255
1966	221	249
1967	282	309
1968	315	328
1969	346	375
1970	432	421
1971	425	458

Source: Murders Reported: 1921-1953 No valid data is available prior to 1954 in view of partial reporting by police departments.
1954-1965 Statistics Canada publication Murder Statistics, 1970, Table 1
1966-1971 Informal advice received from Judicial Division, Statistics Canada.

Homicidal Deaths: 1921-1953, 1970, 1971 Informal advice received from Vital Statistics Section, Statistics Canada based upon published data

1954-1969 Statistics Canada publication Murder Statistics, 1970, Table 1

Compiled by: Statistical Information Centre
February, 1973

[1] From 1954 to 1960 adjustments are made in previously published figures as a result of revised RCMP and OPP figures on murder offences known to the police but no adjustments have been made for the non-reporting of the OPP in those years. From 1961 to date the OPP reported murders known to them to DBS and there were improved data collection techniques. — De 1954 à 1960, des rajustements ont été faits aux chiffres publiés antérieurement à la suite de la rectification des chiffres fournis par la G.R.C. et la P.P.O. sur les infractions par homicides connues de la police, mais aucun rajustement n'a été fait par la S.Q. qui ne fournissait pas de rapports au cours de ces années. De 1961 à date la S.Q. a déclaré les homicides connus d'elle au B.F.S., et il existait des techniques perfectionnées de collecte des données.

[2] Homicidal deaths as officially recorded on provincial death certificates reported to DBS include murders, infanticides, non-accidental manslaughters, assaults (by any means) and poisonings (by another person); exclude manslaughters, assaults and poisonings reported by coroners as accidental, homicides as result of intervention of police and legal executions. Deaths are classified by residence; hence above figures include deaths of Canadian residents occurring in U.S.A., but exclude deaths of all non-Canadian residents occurring in Canada. — Les décès par homicides tels qu'ils sont officiellement enregistrés sur les certificats de décès provinciaux et qui sont signalés au B.F.S. comprennent les homicides, les infanticides, les homicides involontaires coupables; les attentats (par quelque moyen que ce soit) et les empoisonnements (qui sont l'acte d'autres personnes); excluent les homicides involontaires, les attentats et les empoisonnements déclarés comme accidentels par le coroner, les homicides résultant de l'intervention de la police et les exécutions légales. Les décès sont classés selon la résidence; donc, les chiffres ci-dessus comprennent les décès survenus aux États-Unis de résidents canadiens, mais excluent les décès survenus au Canada de tous les résidents non canadiens.

It is uncertain whether Homicidal Deaths prior to 1930 exclude those by intervention of Police & Legal executions

TABLE 4

PERSONS CHARGED, TOTAL CHARGES, RESULT OF CHARGES AND SENTENCES OF CONVICTED PERSONS BY SELECTED INDICTABLE OFFENCES, CANADA, 1956-1969 (1)

Compiled by: Statistical Information Centre, February, 1973

Source: Statistics Canada Publication "Statistics of Criminal & Other Offences", Catalogue No. 85-201

YEAR AND INDICTABLE OFFENCE	PERSONS CHARGED	PERSONS CONVICTED (2)	CHARGES	CONVICTIONS	SENTENCE					ACQUITTALS	DETENTION FOR INSANITY	DISAGREEMENT OF JURY	STAY OF PROCEEDINGS	NO BILL
					SUSPENDED SENTENCE WITHOUT PROBATION	SUSPENDED SENTENCE WITH PROBATION	FINE	INSTITUTION	DEATH					
1969 (3)														
Manslaughter	114	98	114	98	1	2	-	95	-	13	-	-	3	-
Murder, Attempt	15	7	28	7	-	-	-	7	-	13	2	-	6	-
Murder, Capital	2	-	3	-	-	-	-	-	-	1	2	-	-	-
Murder, Non Capital	64	22	69	22	-	-	-	22	-	19	20	1	7	-
Total	195	127	214	127	1	2	-	124	-	46	24	1	16	-
1968														
Manslaughter	88	70	93	71	1	1	-	68	-	19	-	-	2	1
Murder, Attempt	8	5	23	6	-	-	-	5	-	12	-	-	5	-
Murder, Capital	1	1	1	1	-	-	-	-	1	-	-	-	-	-
Murder, Non Capital	56	25	58	25	-	-	-	25	-	18	12	-	3	-
Total	153	101	175	103	1	1	-	98	1	49	12	-	10	1
1967														
Manslaughter	90	75	91	77	-	1	-	74	-	13	-	1	-	-
Murder, Attempt	30	19	46	25	2	-	1	16	-	12	8	-	-	1
Murder, Capital	14	7	14	5	-	-	-	-	7	6	3	-	-	-
Murder, Non Capital	63	36	70	38	-	-	-	36	-	17	12	1	2	-
Total	197	137	221	145	2	1	1	126	7	48	23	2	2	1
1966														
Manslaughter	81	69	89	73	2	-	-	67	-	16	-	-	-	-
Murder, Attempt	24	10	40	11	-	-	-	10	-	21	5	-	3	-
Murder, Capital	18	9	20	10	-	-	-	-	9	4	4	-	2	-
Murder, Non Capital	54	34	57	38	-	-	-	34	-	9	8	2	-	-
Total	177	122	206	132	2	-	-	111	9	50	17	2	5	-

TABLE 4

PERSONS CHARGED, TOTAL CHARGES, RESULT OF CHARGES AND SENTENCES OF CONVICTED PERSONS BY SELECTED INDICTABLE OFFENCES, CANADA, 1956-1969 (1)

Compiled by: Statistical Information Centre, February, 1973

Source: Statistics Canada Publication "Statistics of Criminal & Other Offences", Catalogue No. 85-201

YEAR AND INDICTABLE OFFENCE	PERSONS CHARGED	PERSONS CONVICTED (2)	CHARGES	CONVICTIONS	SENTENCE					ACQUITTALS	DETENTION FOR INSANITY	DISAGREEMENT OF JURY	STAY OF PROCEEDINGS	NO BILL
					SUSPENDED SENTENCE WITHOUT PROBATION	SUSPENDED SENTENCE WITH PROBATION	FINE	INSTITUTION	DEATH					
1965														
Manslaughter	61	50	64	51	-	-	-	50	-	10	-	-	1	2
Murder, Attempt	16	11	26	12	1	-	-	10	-	8	4	-	1	1
Murder, Capital	31	19	37	19	-	-	-	-	19	10	6	1	1	-
Murder, Non Capital	52	36	55	37	-	-	-	36	-	17	-	-	1	-
Total	160	116	182	119	1	-	-	96	19	45	10	1	4	3
1964														
Manslaughter	71	56	72	56	-	1	-	55	-	16	-	-	-	-
Murder, Attempt	19	11	36	16	-	-	-	11	-	16	2	-	2	-
Murder, Capital	15	6	16	6	-	-	-	1	5	2	8	-	-	-
Murder, Non Capital	46	32	52	34	-	-	-	32	-	12	3	3	-	-
Total	151	105	176	112	-	1	-	99	5	46	13	3	2	-
1963														
Manslaughter	62	50	65	50	1	-	-	49	-	15	-	-	-	-
Murder, Attempt	22	14	39	17	2	1	-	11	-	16	5	-	-	1
Murder, Capital	28	14	30	14	-	-	-	3	11	3	13	-	-	-
Murder, Non Capital	63	31	106	31	-	-	-	31	-	14	1	-	-	60
Total	175	109	240	112	3	1	-	94	11	48	19	-	-	61
1962														
Manslaughter	63	53	66	53	1	2	1	49	-	11	-	-	1	1
Murder, Attempt	21	14	37	22	-	-	-	14	-	9	3	1	2	-
Murder, Capital	25	14	29	14	-	-	-	4	13	11	4	-	-	-
Murder, Non Capital	34	20	36	21	-	-	-	20	-	10	4	-	1	-
Total	143	101	168	110	1	2	1	87	13	41	11	1	4	1

PERSONS CHARGED, TOTAL CHARGES, RESULT OF CHARGES AND SENTENCES OF CONVICTED PERSONS BY SELECTED INDICTABLE OFFENCES, CANADA, 1956-1969 (1)

Compiled by: Statistical Information Centre, February, 1973

Source: Statistics Canada Publication "Statistics of Criminal & Other Offences", Catalogue No. 85-201

YEAR AND INDICTABLE OFFENCE	PERSONS CHARGED	PERSONS CONVICTED (2)	CHARGES	CONVICTIONS	SENTENCE					ACQUITTALS	DETENTION FOR INSANITY	DISAGREEMENT OF JURY	STAY OF PROCEEDINGS	NO BILL
					SUSPENDED SENTENCE WITHOUT PROBATION	SUSPENDED SENTENCE WITH PROBATION	FINE	INSTITUTION	DEATH					
1960														
Manslaughter	66	50	70	51	-	-	-	50	-	18	1	-	-	-
Murder, Attempt	21	6	43	17	-	-	-	6	-	19	4	-	2	1
Murder	30	10	32	10	-	-	-	-	10	12	9	-	1	-
Total	117	66	145	78	-	-	-	56	10	49	14	-	3	1
1959														
Manslaughter	66	59	68	68	-	1	1	57	-	8	-	-	-	-
Murder, Attempt	22	17	37	21	-	-	-	17	-	13	1	1	1	-
Murder	51	16	57	16	-	-	-	-	16	31	7	1	3	-
Total	139	92	162	105	-	1	1	74	16	52	8	2	4	-
1958														
Manslaughter	59	40	61	40	-	1	-	39	-	19	-	1	1	-
Murder, Attempt	17	11	27	15	-	-	-	11	-	11	1	-	-	-
Murder	31	16	35	19	-	-	-	-	16	12	3	-	-	-
Total	107	67	123	74	-	1	-	50	16	42	4	1	1	-
1957														
Manslaughter	64	49	65	49	1	-	-	48	-	15	-	-	1	-
Murder, Attempt	19	10	27	12	-	-	1	9	-	10	1	1	1	2
Murder	39	8	42	8	-	-	-	-	8	24	9	-	-	1
Total	122	67	134	69	1	-	1	57	8	49	10	1	2	3
1956														
Manslaughter	166	84	174	87	4	1	3	23	-	83	-	1	2	1
Murder, Attempt	9	4	12	4	-	-	-	4	-	6	1	-	1	-
Murder	23	10	24	10	-	-	-	38	-	7	6	-	1	-
Total	198	98	210	107	4	1	3	65	-	96	7	1	4	1

(1) Excepting 1961, for which data is unavailable
(2) Excluded Provinces of Quebec and Alberta
(3) Count of Persons Convicted sums to Total of Sentence Types

Table 5 - Measures of Central Tendencies of Sentences awarded in 1970 and selected earlier 12-month periods, time servied prior to parole release, for offences involving violence, Canada

OFFENCE INVOLVING VIOLENCE	SENTENCE AWARDED IN 1970		AVERAGE OF SENTENCES FOR SEVEN 12-MONTH PERIODS		TIME SERVED PRIOR TO PAROLE RELEASE IN 1970	
	MODE	MEAN OF DEF. SENTENCES	MODE	MEAN OF DEF. SENTENCES	MODE	MEAN OF DEF. SENTENCES
MURDER	Life	-	Life	-	10-15 yrs.	9.7 yrs (1)
MURDER, ATTEMPT	-	9.9 yrs.	10 & under 15 years	9.4 yrs.	6-8	5.8
MANSLAUGHTER	6 & under 10 yrs.	8.4	6 & under 10	8.0	1-1½	2.5
RAPE	-	5.5	3 & under 4	5.5	-	1.5
ROBBERY	2 & under 3 yrs.	4.9	2 & under 3	5.0	6-12 months	1.7
WOUNDING	2 & under 3 yrs.	4.6	2 & under 3	4.5	-	2.2
ASSAULTS (Not Sexual)	2 & under 3 yrs.	2.3	2 & under 3	2.5	3-6 months	0.8
TOTAL OFFENCES	2 & under 3 yrs.	5.1	2 & under 3	5.1	6-12 months	1.9

Compiled by: Statistical Information Centre
February, 1973

Source: Table 2 of present project;
Parole Statistics, 1970

(1) 22 of the 36 cases served less than 10 years of their life sentences for Non-Capital Murder. These cases were not subjected to Governor-in-Council review prior to release on parole because the sentences were not death commuted to life, or life as a minimum punishment imposed after the amendment of the Parole Act, January 4, 1968. However, they were retroactively submitted to the Governor-in-Council in compliance with the provisions of Section 684(3) Criminal Code of Canada, R.S.C. 1970.

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / A: ASSISTANT DEPUTY SOLICITOR GENERAL

FROM / DE: CHIEF, STATISTICAL INFORMATION CENTRE

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE - N/RÉFÉRENCE	402-2-9
YOUR FILE - V/RÉFÉRENCE	
DATE	February 6, 1973.

SUBJECT / OBJET: Statistics - Crimes of Violence and related Sentencing Practice

On January 31st, I was advised by Mr. Shuster that Mr. Tassé requested certain data for the information of the Solicitor General, and the attached is forwarded in this connection:

(1) Modification of eight tables in the "Fattah Report" relating to Canada totals for crimes of violence, to update them to include data for 1971.

The additional data was released by Statistics Canada to the Ministry in advance of its publication;

(2) Tabulations to enable a response to the question of whether there are any significant trends in sentencing practice relating to violent offences over the past few years.

Data has been compiled to enable analysis of this question at two points in the Criminal Justice System:

(a) Table 1 is to catch sentencing practice at the court level to enable a determination of possible trends between incarcerative and non-incarcerative sanctions, where law permits the latter, and within any category of sanction over the years;

(b) Table 2 provides a constant format for analysis of sentence length at admission to penitentiary following conviction for selected violent offences.

In neither case would any significant trends seem apparent.

On February 2nd, further information was requested relating to court disposition of homicide charges, and the incidence of homicide and a number of other considerations. Data is under preparation in this connection.

Att.

John F. Townesend

001487

Table 21 (p. 91)

Percentage of Offences with Violence (Murder, Attempted Murder, Manslaughter, Wounding, Assaults, Rape and Robbery) to all Offences and to Criminal Code Offences -- Canada 1962-1971

Year	Number of actual offences	Violent offences	Percentage	Number of Criminal Code offences	Violent offences	Percentage
1962	796,675	34,954	4.4%	514,986	34,954	6.8%
1963	874,572	40,818	4.7%	572,105	40,818	7.1%
1964	960,917	48,082	5.0%	626,038	48,082	7.7%
1965	989,451	51,978	5.3%	628,418	51,978	8.3%
1966	1,094,889	61,246	5.6%	702,809	61,246	8.7%
1967	1,190,207	68,640	5.8%	786,071	68,640	8.7%
1968	1,335,444	77,812	5.8%	897,530	77,812	8.7%
1969	1,470,761	85,367	5.8%	994,790	85,367	8.6%
1970	1,574,145	92,373	5.9%	1,109,988	92,373	8.3%
1971	1,648,817	98,143	6.0%	1,166,457	98,143	8.4%
Grand Total	11,935,878	659,413	-	7,999,192	659,413	-
Annual average	1,198,588	65,941	5.5%	799,919	65,941	8.2%

Table 22 (p. 93)

Number of specific offences and their percentage to the total of violent offences 1962-1971

Offence	1962		1963		1964		1965		1966	
	Number	%	Number	%	Number	%	Number	%	Number	%
Criminal Homicide	265	0.75	249	0.61	253	0.53	277	0.53	248	0.40
Attempted Murder	83	0.24	108	0.26	121	0.25	111	0.21	131	0.21
Wounding + Assaults	29,076	83.18	34,027	83.36	41,297	85.89	45,373	87.29	45,373	87.29
Rape	579	1.66	549	1.34	745	1.55	641	1.23	652	1.06
Robbery	4,951	14.16	5,885	14.42	5,666	11.78	5,576	10.73	5,710	9.32
Total	34,954	100.00	40,818	100.00	48,082	100.00	51,978	100.00	61,246	100.00

	1967		1968		1969		1970		1971	
	Number	%	Number	%	Number	%	Number	%	Number	%
Criminal Homicide	337	0.49	374	0.48	386	0.45	425	0.46	472	0.48
Attempted Murder	139	0.20	181	0.23	216	0.25	260	0.28	335	0.34
Wounding + Assaults	60,179	87.67	67,983	87.37	73,718	86.35	78,979	85.50	84,867	86.47
Rape	773	1.13	892	1.15	1,019	1.19	1,079	1.17	1,230	1.25
Robbery	7,212	10.51	8,382	10.77	10,028	11.75	11,630	12.59	11,239	11.45
Total	68,640	100.00	77,812	100.00	85,367	100.00	92,373	100.00	98,143	100.00

Average rates for the whole period

– Criminal Homicide	0.52
– Attempted Murder	0.25
– Wounding + Assaults	86.21
– Rape	1.27
– Robbery	11.75
TOTAL	100.00

Table 23 (p. 94)

Changes in Violent Offences 1962-1971

Year	Total of violent offences	Rate per 100,000 7 years and over	Percent change over 1962	Percent annual change
1962	34,954	226.6	100.0	100.0
1963	40,818	259.6	+ 14.6	+ 14.6
1964	48,082	299.6	+ 32.2	+ 15.4
1965	51,978	316.9	+ 39.8	+ 5.8
1966	61,246	364.6	+ 60.9	+ 15.1
1967	68,640	395.5	+ 74.5	+ 8.5
1968	77,812	437.4	+ 93.0	+ 10.6
1969	85,367	469.0	+ 107.0	+ 7.2
1970	92,373	494.4	+ 118.2	+ 5.4
1971	98,143	516.6	+ 128.0	+ 4.5

Table 32 (p. 108)

Criminal Homicide 1962-1971

CANADA

Year	Number	Rate Per 100,000 Population 7 Years and Over	Percent Change Over 1962		Annual Percent Change	
			Number	Rate	Number	Rate
1962	265	1.7	100.0	100.0		
1963	249	1.6	- 6.0	- 5.9	- 6.0	- 5.9
1964	253	1.6	- 4.5	- 5.9	+ 1.6	0.0
1965	277	1.7	+ 4.5	0.0	+ 9.5	+ 6.3
1966	248	1.5	- 6.4	- 11.8	- 10.5	- 11.8
1967	337	1.9	+ 27.2	+ 11.8	+ 35.9	+ 26.7
1968	374	2.1	+ 41.1	+ 23.5	+ 11.0	+ 10.5
1969	386	2.1	+ 45.7	+ 23.5	+ 3.2	0.0
1970	425	2.3	+ 60.4	+ 35.3	+ 10.1	+ 9.5
1971	472	2.5	+ 78.1	+ 47.1	+ 11.1	+ 8.6

Table 33 (p. 109)

Attempted Murder – 1962-1971

CANADA

Year	Number	Rate per 100,000 Population 7 years and over	Percent change over 1962		Annual percent change	
			Number	Rate	Number	Rate
1962	83	0.5	100.0	100.0		
1963	108	0.7	+ 30.1	+ 40.0	+ 30.1	+ 40.0
1964	121	0.8	+ 45.8	+ 60.0	+ 12.0	+ 14.3
1965	111	0.7	+ 33.7	+ 40.0	– 8.3	– 12.5
1966	131	0.8	+ 57.8	+ 60.0	+ 18.0	+ 14.3
1967	139	0.8	+ 67.5	+ 60.0	+ 6.1	0.0
1968	181	1.0	+ 118.1	+ 100.0	+ 30.2	+ 25.0
1969	216	1.2	+ 160.2	+ 140.0	+ 19.3	+ 20.0
1970	260	1.4	+ 213.3	+ 180.0	+ 20.4	+ 16.7
1971	335	1.8	+ 303.6	+ 260.0	+ 28.8	+ 44.4

Table 34 (p. 111)

Wounding and Assaults 1962-1971

CANADA

Year	Number	Rate per 100,000 Population 7 years and over	Percent change over 1962		Annual percent change	
			Number	Rate	Number	Rate
1962	29,076	188.5	100.0	100.0		
1963	34,027	216.4	+ 17.0	+ 14.8	+ 17.0	+ 14.8
1964	41,297	257.3	+ 42.0	+ 36.5	+ 21.4	+ 18.9
1965	45,373	276.6	+ 56.1	+ 46.7	+ 9.9	+ 7.5
1966	54.505	324.4	+ 87.5	+ 72.1	+ 20.1	+ 17.3
1967	60,179	346.7	+ 107.0	+ 83.9	+ 10.4	+ 6.9
1968	67,983	382.2	+ 133.8	+ 102.8	+ 13.0	+ 10.2
1969	73,718	405.0	+ 153.5	+ 114.9	+ 8.4	+ 6.0
1970	78,979	424.4	+ 171.6	+ 125.1	+ 7.1	+ 4.8
1971	84,867	446.7	+ 191.9	+ 137.0	+ 7.5	+ 9.5

Table 35 (p. 113)

Rape 1962-1971

CANADA

Year	Number	Rate per 100,000 Population 7 years and over	Percent change over 1962		Annual percent change	
			Number	Rate	Number	Rate
1962	5 (1)	3.8	100.0	100.0		
1963	549	3.5	- 5.2	- 7.9	- 5.2	- 7.9
1964	745	4.6	+ 28.7	+21.1	+ 35.7	+ 31.4
1965	641	3.9	+ 10.7	+ 2.6	- 14.0	- 15.2
1966	652	3.9	+ 12.6	+ 2.6	+ 1.7	0.0
1967	773	4.5	+ 33.5	+ 18.4	+ 18.6	+ 15.4
1968	892	5.0	+ 54.1	+ 31.6	+ 15.4	+ 11.1
1969	1,019	5.6	+ 76.0	+ 47.4	+ 14.2	+ 12.0
1970	1,079	5.8	+ 86.4	+ 52.6	+ 5.9	+ 3.6
1971	1,230	6.5	- (1)	- (1)	+ 14.0	+ 12.1

(1) Error in publication data

Table 36 (p. 114)

Robbery 1962-1971
CANADA

Year	Number	Rate per 100,000 Population 7 years and over	Percent change over 1962		Annual percent change	
			Number	Rate	Number	Rate
1962	4,951	32.1	100.0	100.0		
1963	5,885	37.4	+ 18.9	+ 16.5	+ 18.9	+ 16.5
1964	5,666	35.3	+ 14.4	+ 10.0	+ 3.7	+ 5.6
1965	5,576	34.0	+ 12.6	+ 5.9	- 1.6	- 3.7
1966	5,710	34.0	+ 15.3	+ 5.9	+ 2.4	- 0.0
1967	7,212	41.6	+ 45.7	+ 29.6	+ 26.3	+ 22.4
1968	8,382	47.1	+ 69.3	+ 46.7	+ 16.2	+ 13.2
1969	10,028	55.1	+ 102.5	+ 71.7	+ 19.6	+ 17.0
1970	11,630	62.5	+ 134.9	+ 94.7	+ 16.0	+ 13.4
1971	11,239	59.2	+ 127.0	+ 84.4	- 3.4	- 5.9

Table 37 (p. 116)

Changes in Crimes of Violence 1962-1971

CANADA

Offence	1971 Number	1971 Rate per 100,000 Population 7 years and over	Percent change over 1970 Number	Percent change over 1970 Rate	Percent change over 1962 Number	Percent change over 1962 Rate
Criminal Homicide (Murder and Manslaughter)	472	2.5	+ 11.1	+ 8.6	+ 78.1	+ 47.1
Attempted Murder	335	1.8	+ 28.8	+44.4	+303.6	+ 260.00
Wounding and Assaults	84,867	446.7	+ 7.5	+ 9.5	+191.9	+ 137.0
Rape	1,230	6.5	+ 14.0	+12.1	-	-
Robbery	11,239	59.2	- 3.4	- 5.9	+127.0	+ 84.4

TABLE 1

PERSONS CHARGED AND SENTENCES OF CONVICTED PERSONS BY SELECTED OFFENCES AGAINST THE PERSON OR AGAINST PROPERTY WITH VIOLENCE, CANADA, BIENNIAL 1963-1969

OFFENCE	PERSONS CHARGED	PERSONS CONVICTED	SENTENCE									
			SUSP SENT WITHOUT PROBATION		SUSP SENT WITH PROBATION		FINE		INSTITUTION		DEATH	
			No.	%	No	%	No.	%	No.	%	No.	%
Assault Causing Bodily Harm												
1969	2,197	1,670	180	10.8	186	11.1	723	43.3	581	34.8	-	0.0
68	2,298	1,776	213	12.0	162	9.1	724	40.8	677	38.1	-	0.0
67	2,648	2,047	239	11.7	189	9.2	831	40.6	788	38.5	-	0.0
65	2,739	2,161	206	9.5	184	8.5	954	44.1	817	37.8	-	0.0
63	2,530	1,924	246	12.8	150	7.8	812	42.2	734	38.1	-	0.0
Manslaughter												
1969	114	98	1	1.0	2	2.0	-	0.0	95	97.0	-	0.0
68	88	70	1	1.4	1	1.4	-	0.0	68	97.1	-	0.0
67	90	75	-	0.0	1	1.3	-	0.0	74	98.7	-	0.0
65	61	50	-	0.0	-	0.0	-	0.0	50	100.0	-	0.0
63	62	50	1	2.0	-	0.0	-	0.0	49	98.0	-	0.0
Murder, Attempted												
1969	15	7	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
68	8	5	-	0.0	-	0.0	-	0.0	5	100.0	-	0.0
67	30	19	2	10.5	-	0.0	1	5.3	16	84.2	-	0.0
65	16	11	1	9.0	-	0.0	-	0.0	10	90.9	-	0.0
63	22	14	2	14.3	1	7.1	-	0.0	11	78.6	-	0.0
Murder, Capital												
1969	2	-	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
68	1	1	-	0.0	-	0.0	-	0.0	-	0.0	1	100.0
67	14	7	-	0.0	-	0.0	-	0.0	-	0.0	7	100.0
65	31	19	-	0.0	-	0.0	-	0.0	-	0.0	19	100.0
63	28	14	-	0.0	-	0.0	-	0.0	3	21.4	11	78.6
Murder, Non-Capital												
1969	64	22	-	0.0	-	0.0	-	0.0	22	100.0	-	0.0
68	56	25	-	0.0	-	0.0	-	0.0	25	100.0	-	0.0
67	63	36	-	0.0	-	0.0	-	0.0	36	100.0	-	0.0
65	52	36	-	0.0	-	0.0	-	0.0	36	100.0	-	0.0
63	63	31	-	0.0	-	0.0	-	0.0	31	100.0	-	0.0
Rape												
1969	144	63	2	3.2	1	1.6	-	0.0	60	95.2	-	0.0
68	141	68	-	0.0	-	0.0	-	0.0	68	100.0	-	0.0
67	127	57	2	3.5	3	5.3	-	0.0	52	91.2	-	0.0
65	107	54	1	1.9	1	1.9	-	0.0	52	96.3	-	0.0
63	127	74	-	0.0	1	1.4	-	0.0	73	98.6	-	0.0
Robbery												
1969	853	689	6	0.9	73	10.6	2	0.3	608	88.2	-	0.0
68	959	743	12	1.6	51	6.9	5	0.7	675	90.8	-	0.0
67	986	827	44	5.3	101	12.2	14	1.7	668	80.8	-	0.0
65	941	798	29	3.6	84	10.5	8	1.0	677	84.8	-	0.0
63	870	763	26	3.4	84	11.0	14	1.8	639	83.7	-	0.0

Compiled by Statistical Information Centre
February, 1973

Source: Statistics Canada Publication
Statistics of Criminal and
Other Offences, Table 8

(1) 1969 Data does not include returns from the provinces of Quebec or Alberta owing to the conversion to Integrated Statistical Reporting Systems.

OFFENCE: ASSAULTS

TABLE 2 - SENTENCE LENGTH AT PENITENTIARY ADMISSION BY YEAR OF ADMITTANCE, FOR OFFENCE OF ASSAULTS

YEAR (1)	SENTENCE																							
	TOTAL ADMISSIONS		UNDER 2 YRS.		2 YRS. AND UNDER 3		3 YRS. AND UNDER 4		4 YRS. AND UNDER 5		5 YRS. AND UNDER 6		6 YRS. AND UNDER 10		10 YRS AND UNDER 15		15 YRS AND UNDER 20		20 YRS. AND OVER		DEATH TO LIFE		LIFE		INDEF. PREV. DETN.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1964-65	53	100.0	1	1.9	47	88.7	3	5.7	1	1.9	1	1.9	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1965-66	63	100.0	4	6.3	56	88.9	3	4.8	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1966-67	49	100.0	-	0.0	46	93.9	2	4.1	-	0.0	1	2.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1967-68	62	100.0	2	3.2	54	87.1	3	4.8	1	1.6	1	1.6	-	0.0	1	1.6	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1968-69	54	100.0	8	14.8	42	77.8	2	3.7	1	1.9	1	1.9	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1969	67	100.0	9	13.4	50	74.6	4	6.0	2	3.0	2	3.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1970	77	100.0	23	29.9	51	66.2	1	1.3	-	0.0	2	2.6	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
Average	60.7	100.0	6.7	9.9	49.4	82.4	2.6	4.3	0.7	1.2	1.1	1.9	-	0.0	0.1	0.2	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0

Compiled by: Statistical Information Centre,
February, 1973.

Source: Statistics Canada publication
Correctional Institution Statistics,
Tables 4 & 20

(1) Owing to a change in the publication reporting time-frame in 1969 from fiscal year to calendar year, data for the first three months of 1969 are reported twice.

OFFENCE: MANSLAUGHTER

TABLE 2 - SENTENCE LENGTH AT PENITENTIARY ADMISSION BY YEAR OF ADMITTANCE, FOR OFFENCE OF MANSLAUGHTER, CANADA

YEAR (1)	SENTENCE																							
	TOTAL ADMISSIONS		UNDER 2 YRS.		2 YRS. AND UNDER 3		3 YRS. AND UNDER 4		4 YRS. AND UNDER 5		5 YRS. AND UNDER 6		6 YRS. AND UNDER 10		10 YRS AND UNDER 15		15 YRS AND UNDER 20		20 YRS. AND OVER		DEATH TO LIFE		LIFE		INDEF. PREV. DETH.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1964-65	52	100.0	-	0.0	2	3.8	6	11.5	4	7.7	10	19.2	14	26.9	10	19.2	4	7.7	2	3.8	-	0.0	-	0.0	-	0.0
1965-66	55	100.0	-	0.0	4	7.2	7	12.7	4	7.2	5	9.1	19	34.5	8	14.5	3	5.5	2	3.6	-	0.0	3	5.5	-	0.0
1966-67	47	100.0	-	0.0	3	6.4	6	12.8	3	6.4	19	40.4	8	17.0	5	10.6	2	4.3	-	0.0	-	0.0	1	2.1	-	0.0
1967-68	72	100.0	-	0.0	5	6.9	12	16.6	4	5.6	15	20.8	19	26.3	10	13.8	5	6.9	2	2.7	-	0.0	-	0.0	-	0.0
1968-69	87	100.0	3	3.4	7	8.0	9	10.3	11	12.6	10	11.4	20	22.9	20	22.9	2	2.3	4	4.6	-	0.0	1	1.1	-	0.0
1969	119	100.0	-	0.0	10	8.4	16	13.4	8	6.7	17	14.3	29	24.4	29	24.4	8	6.7	-	0.0	-	0.0	2	1.7	-	0.0
1970	104	100.0	-	0.0	6	5.8	12	11.5	8	7.7	14	13.5	31	29.8	23	22.1	5	4.8	3	2.9	-	0.0	2	1.9	-	0.0
Average	76.5	100.0	0.4	0.5	5.2	6.6	9.7	12.7	6.0	7.7	12.9	18.4	20.0	25.9	15.0	18.2	4.1	5.5	1.9	2.5	-	0.0	1.3	1.8	-	0.0

Compiled by: Statistical Information Centre,
February, 1973.

Source: Statistics Canada publication
Correctional Institution Statistics,
Tables 4 & 20

(1) Owing to a change in the publication reporting time-frame in 1969 from fiscal year to calendar year, data for the first three months of 1969 are reported twice.

TABLE 2 - SENTENCE LENGTH AT PENITENTIARY ADMISSION BY YEAR OF ADMITTANCE, FOR OFFENCE OF ATTEMPTED MURDER

OFFENCE: ATTEMPTED MURDER

YEAR (1)	SENTENCE																							
	TOTAL ADMISSIONS		UNDER 2 YRS.		2 YRS. AND UNDER 3		3 YRS. AND UNDER 4		4 YRS. AND UNDER 5		5 YRS. AND UNDER 6		6 YRS. AND UNDER 10		10 YRS AND UNDER 15		15 YRS AND UNDER 20		20 YRS. AND OVER		DEATH TO LIFE		LIFE		INDEF. PREV. DETN.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1964-65	13	100.0	-	0.0	-	0.0	2	15.4	-	0.0	4	30.8	2	15.4	3	23.1	1	7.7	1	7.7	-	0.0	-	0.0	-	0.0
1965-66	8	100.0	-	0.0	-	0.0	1	12.5	-	0.0	2	25.0	1	12.5	2	25.0	-	0.0	1	12.5	-	0.0	1	12.5	-	0.0
1966-67	10	100.0	-	0.0	1	10.0	-	0.0	1	10.0	1	10.0	1	10.0	6	60.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1967-68	7	100.0	-	0.0	-	0.0	-	0.0	-	0.0	1	14.3	1	14.3	3	42.8	1	14.3	-	0.0	-	0.0	1	14.3	-	0.0
1968-69	8	100.0	-	0.0	1	12.5	2	25.0	1	12.5	1	12.5	1	12.5	2	25.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1969	21	100.0	-	0.0	1	4.8	2	9.5	5	23.8	1	4.8	3	14.3	4	19.0	2	9.5	2	9.5	-	0.0	1	4.8	-	0.0
1970	19	100.0	-	0.0	3	15.8	-	0.0	2	10.5	3	15.8	2	10.5	3	15.8	3	15.8	2	10.5	-	0.0	1	5.3	-	0.0
Average	12.3	100.0	-	0.0	0.9	6.2	1.0	8.9	1.3	8.1	1.9	16.2	1.6	12.8	3.3	30.1	1.0	6.8	0.9	5.7	-	0.0	0.6	5.3	-	0.0

Compiled by: Statistical Information Centre,
February, 1973.

Source: Statistics Canada publication
Correctional Institution Statistics,
Tables 4 & 20

(1) Owing to a change in the publication reporting time-frame in 1969 from fiscal year to calendar year, data for the first three months of 1969 are reported twice.

TABLE 2- SENTENCE LENGTH AT PENITENTIARY ADMISSION BY YEAR OF ADMITTANCE, FOR OFFENCE OF MURDER, CANADA

OFFENCE: MURDER

YEAR (1)	SENTENCE																							
	TOTAL ADMISSIONS		UNDER 2 YRS.		2 YRS. AND UNDER 3		3 YRS. AND UNDER 4		4 YRS. AND UNDER 5		5 YRS. AND UNDER 6		6 YRS. AND UNDER 10		10 YRS AND UNDER 15		15 YRS AND UNDER 20		20 YRS. AND OVER		DEATH TO LIFE		LIFE		INDEF. PREV. DETN.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1964-65	41	100.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	6	14.6	35	85.4	-	0.0
1965-66	42	100.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	7	16.7	35	83.3	-	0.0
1966-67	41	100.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	3	7.3	38	92.7	-	0.0
1967-68	43	100.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	6	14.0	37	86.0	-	0.0
1968-69	41	100.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	4	9.8	36	87.8	1	2.4
1969	49	100.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	4	8.2	45	91.8	-	0.0
1970	74	100.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	1	1.4	-	0.0	73	98.6	-	0.0
Average	47.3	100.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	0.1	0.2	4.3	10.1	42.7	89.4	0.1	0.3

Compiled by: Statistical Information Centre,
February, 1973.

Source: Statistics Canada publication
Correctional Institution Statistics,
Tables 4 & 20

(1) Owing to a change in the publication reporting time-frame in 1969 from fiscal year to calendar year, data for the first three months of 1969 are reported twice.

TABLE 2- SENTENCE LENGTH AT PENITENTIARY ADMISSION BY YEAR OF ADMITTANCE, FOR OFFENCE OF WOUNDING

OFFENCE: WOUNDING

YEAR (1)	SENTENCE																							
	TOTAL ADMISSIONS		UNDER 2 YRS.		2 YRS. AND UNDER 3		3 YRS. AND UNDER 4		4 YRS. AND UNDER 5		5 YRS. AND UNDER 6		6 YRS. AND UNDER 10		10 YRS AND UNDER 15		15 YRS AND UNDER 20		20 YRS. AND OVER		DEATH TO LIFE		LIFE		INDEF. PREV. DETN.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1964-65	43	100.0	-	0.0	15	34.8	12	27.9	6	14.0	7	16.3	1	2.3	2	4.7	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1965-66	38	100.0	1	2.6	13	34.2	11	28.9	2	5.3	7	18.4	3	7.9	1	2.6	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1966-67	40	100.0	-	0.0	11	27.5	13	32.5	3	7.5	8	20.0	5	12.5	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1967-68	53	100.0	-	0.0	18	33.9	12	22.6	7	13.2	9	17.0	5	9.4	2	3.8	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1968-69	51	100.0	1	2.0	16	31.3	17	33.3	4	7.8	6	11.8	4	7.8	3	5.9	-	0.0	-	0.0	-	0.0	-	0.0	-	0.0
1969	67	100.0	1	1.5	20	29.8	17	25.3	6	9.0	7	10.4	13	19.0	2	3.0	-	0.0	1	1.5	-	0.0	-	0.0	-	0.0
1970	71	100.0	1	1.4	28	39.4	11	15.4	5	7.0	12	7.0	8	11.3	5	7.0	-	0.0	-	0.0	-	0.0	1	1.4	-	0.0
Average	51.8	100.0	0.6	1.0	17.2	32.9	13.3	26.6	4.7	9.1	18.0	15.8	5.8	10.0	2.1	3.9	-	0.0	0.1	0.2	-	0.0	0.1	0.2	-	0.0

Compiled by: Statistical Information Centre,
February, 1973.

Source: Statistics Canada publication
Correctional Institution Statistics,
Tables 4 & 20

(1) Owing to a change in the publication reporting time-frame in 1969 from fiscal year to calendar year, data for the first three months of 1969 are reported twice.

TABLE 2 - SENTENCE LENGTH AT PENITENTIARY ADMISSION BY YEAR OF ADMITTANCE, FOR OFFENCE OF RAPE

OFFENCE: RAPE

YEAR (1)	SENTENCE																							
	TOTAL ADMISSIONS		UNDER 2 YRS.		2 YRS. AND UNDER 3		3 YRS. AND UNDER 4		4 YRS. AND UNDER 5		5 YRS. AND UNDER 6		6 YRS. AND UNDER 10		10 YRS AND UNDER 15		15 YRS AND UNDER 20		20 YRS. AND OVER		DEATH TO LIFE		LIFE		INDEF. PREV. DETN.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1964-65	77	100.0	-	0.0	9	11.7	16	20.8	10	13.0	26	33.8	5	6.5	6	7.8	1	1.3	1	1.3	-	0.0	3	3.9	-	0.0
1965-66	48	100.0	-	0.0	12	25.0	11	22.9	10	20.8	6	12.5	3	6.2	4	8.3	2	4.2	-	0.0	-	0.0	-	0.0	-	0.0
1966-67	55	100.0	-	0.0	13	23.6	17	30.9	9	16.4	5	9.1	5	9.1	5	9.1	1	1.8	-	0.0	-	0.0	-	0.0	-	0.0
1967-68	45	100.0	-	0.0	10	22.2	8	17.8	8	17.8	8	17.8	6	13.3	4	8.9	1	2.2	-	0.0	-	0.0	-	0.0	-	0.0
1968-69	91	100.0	-	0.0	17	18.7	18	19.8	17	18.7	14	15.4	13	14.3	10	11.0	-	0.0	1	1.1	-	0.0	1	1.1	-	0.0
1969	87	100.0	1	1.1	15	17.2	20	23.0	15	17.2	13	14.9	12	13.8	6	6.9	4	4.6	1	1.1	-	0.0	-	0.0	-	0.0
1970	85	100.0	1	1.2	16	18.8	20	23.5	9	10.6	13	15.3	20	23.5	5	5.9	1	1.2	-	0.0	-	0.0	-	0.0	-	0.0
Average	69.7	100.0	0.3	0.3	13.1	19.6	15.7	22.7	11.1	16.4	12.1	17.0	9.1	12.4	5.7	8.3	1.4	2.2	0.4	0.5	-	0.0	0.6	0.7	-	0.0

Compiled by: Statistical Information Centre,
February, 1973.

Source: Statistics Canada publication
Correctional Institution Statistics,
Tables 4 & 20

(1) Owing to a change in the publication reporting time-frame in 1969 from fiscal year to calendar year, data for the first three months of 1969 are reported twice.

TABLE 2 - SENTENCE LENGTH AT PENITENTIARY ADMISSION BY YEAR OF ADMITTANCE, FOR OFFENCE OF ROBBERY, CANADA

OFFENCE: ROBBERY

YEAR (1)	SENTENCE																							
	TOTAL ADMISSIONS		UNDER 2 YRS.		2 YRS. AND UNDER 3		3 YRS. AND UNDER 4		4 YRS. AND UNDER 5		5 YRS. AND UNDER 6		6 YRS. AND UNDER 10		10 YRS AND UNDER 15		15 YRS AND UNDER 20		20 YRS. AND OVER		DEATH TO LIFE		LIFE		INDEF. PREV. DETN.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1964-65	601	100.0	-	0.0	202	33.6	123	20.4	54	9.0	87	14.5	63	10.5	49	8.1	14	2.3	8	1.3	-	0.0	1	1.7	-	0.0
1965-66	555	100.0	3	0.54	180	32.4	120	21.6	63	11.4	83	15.0	65	11.7	32	5.8	4	0.72	4	0.72	-	0.0	1	0.18	-	0.0
1966-67	543	100.0	3	0.55	154	28.3	121	22.2	57	10.5	80	14.7	76	14.0	43	8.0	6	1.1	3	0.55	-	0.0	-	0.0	-	0.0
1967-68	604	100.0	3	0.49	228	37.7	133	22.0	73	12.0	64	10.6	54	8.9	31	5.1	13	2.1	4	0.66	-	0.0	1	0.16	-	0.0
1968-69	714	100.0	3	0.42	231	32.3	171	24.0	67	9.4	99	13.9	79	11.1	45	6.3	5	0.70	12	1.9	-	0.0	2	0.28	-	0.0
1969	724	100.0	5	0.69	234	32.3	160	22.0	74	10.2	114	15.7	78	10.8	44	6.1	10	1.4	3	0.41	-	0.0	2	0.27	-	0.0
1970	834	100.0	16	1.9	246	29.4	200	24.0	87	10.4	126	15.1	98	11.8	43	5.2	6	0.72	10	1.1	-	0.0	1	0.12	1	0.12
Average	653.8	100.0	4.7	0.7	210.7	32.3	146.9	22.3	67.9	10.4	93.9	14.2	73.3	11.3	41	6.4	8.3	1.3	6.3	0.9	-	0.0	1.1	0.4	0.1	0.02

Compiled by: Statistical Information Centre,
February, 1973.

Source: Statistics Canada publication
Correctional Institution Statistics,
Tables 4 & 20

(1) Owing to a change in the publication reporting time-frame in 1969 from fiscal year to calendar year, data for the first three months of 1969 are reported twice.

TABLE 2 - SENTENCE LENGTH AT PENITENTIARY ADMISSION BY YEAR OF ADMITTANCE, FOR OFFENCE OF TOTAL OFFENCES

OFFENCE: TOTAL OFFENCES

YEAR (1)	SENTENCE																							
	TOTAL ADMISSIONS		UNDER 2 YRS.		2 YRS. AND UNDER 3		3 YRS. AND UNDER 4		4 YRS. AND UNDER 5		5 YRS. AND UNDER 6		6 YRS. AND UNDER 10		10 YRS AND UNDER 15		15 YRS AND UNDER 20		20 YRS. AND OVER		DEATH TO LIFE		LIFE		INDEF. PREV. DETN.	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1964-65	880	100.0	1	0.1	275	31.3	162	18.4	75	8.5	135	15.3	85	9.7	70	8.0	20	2.3	12	1.4	6	0.7	39	4.4	-	0.0
1965-66	809	100.0	8	0.1	265	32.8	153	19.0	79	9.8	103	12.7	91	11.2	47	5.8	9	1.1	7	0.9	7	0.9	40	5.0	-	0.0
1966-67	785	100.0	3	0.4	228	29.0	159	20.3	73	9.3	114	14.5	95	12.1	59	7.5	9	1.1	3	0.4	3	0.4	39	5.0	-	0.0
1967-68	886	100.0	5	0.6	315	35.6	168	19.0	93	10.5	98	11.0	85	9.6	51	5.8	20	2.3	6	0.7	6	0.7	39	4.4	-	0.0
1968-69	1046	100.0	15	1.4	314	30.0	219	20.9	101	9.7	131	12.5	117	11.2	80	7.6	7	0.7	17	1.6	4	0.4	40	3.8	1	0.1
1969	1134	100.0	16	1.4	330	29.1	219	19.3	110	9.7	154	13.6	135	11.9	85	7.5	24	2.1	7	0.6	4	0.4	50	4.4	-	0.0
1970	1264	100.0	41	3.2	350	27.7	244	19.3	111	8.8	170	13.4	159	12.6	79	6.3	15	1.2	16	1.3	-	0.0	78	6.2	1	0.1
Average	972.0	100.0	12.7	1.0	296.7	30.8	189.1	19.5	91.7	9.5	129.3	13.3	109.6	11.2	67.3	6.9	14.9	1.5	9.7	1.0	4.3	0.5	46.4	4.7	0.3	0.03

Compiled by: Statistical Information Centre,
February, 1973.

Source: Statistics Canada publication
Correctional Institution Statistics,
Tables 4 & 20

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Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: Deputy Solicitor General.

FROM / DE: Departmental Assistant.

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: February 6, 1973

SUBJECT / OBJET: Bill C - 117, An Act to Provide for a National Plebiscite on the Abolition of Capital Punishment - Mr. Reynolds

The Solicitor General has requested a brief on the proposal contained within this bill to include a recommended position.

J.R. Cameron

T. M. Macleod
eo
Feb 6/73.

001506

CANADA

WITH THE COMPLIMENTS
OF THE
DEPARTMENT
OF
EXTERNAL AFFAIRS

AVEC LES HOMMAGES
DU
MINISTÈRE
DES
AFFAIRES EXTÉRIEURES

February 6, 1973

W. H. MONTGOMERY

Legal Advisory Division

File Class 65

001507

EXT. 916/BIL. (REV. 9/70)
7530-21-029-3984

cc: Deputy Solicitor General
Deputy Commissioner, RCMP

D.M.
(Foose)

DM SM
SOL GEN

File: 45-Brit-10-5

OTTAWA, K1A 0G2

February 6, 1973.

Dear Mr. Smith,

We refer to your recent conversations with Mr. Cole of this Division during which it was agreed that we would send you any further reports of the U.K. Law Commission that we may receive through our High Commission in London.

In this respect, we are pleased to enclose a copy of the Twelfth Report of the Criminal Law Revision Committee which contains provisional conclusions regarding the penalty for murder. We also enclose copies of various articles on this subject which recently appeared in U.K. newspapers and which we trust you will find to be of interest.

Yours sincerely,

W. H. MONTGOMERY

Legal Advisory Division

Mr. T.B. Smith, Q.C.,
Director,
Advisory and International
Law Section,
Department of Justice,
Justice Building,
Wellington Street,
OTTAWA, Ontario,
K1A 0H8.

Criminal Law Revision Committee

TWELFTH REPORT
Penalty for Murder

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty
January 1973

LONDON
HER MAJESTY'S STATIONERY OFFICE
16p net
Cmnd. 5184

The estimated cost of the preparation of this report (including the expenses of the committee) is £614 of which £470 represents the estimated cost of the printing and publishing of this report.

CRIMINAL LAW REVISION COMMITTEE

GENERAL TERMS OF REFERENCE

The Criminal Law Revision Committee was set up on 2nd February 1959 by the then Home Secretary, Lord Butler, " to be a standing committee to examine such aspects of the criminal law of England and Wales as the Home Secretary may from time to time refer to the committee, to consider whether the law requires revision and to make recommendations ".

MEMBERS OF THE COMMITTEE

The Right Honourable Lord Justice Edmund DAVIES, *Chairman*
The Right Honourable Lord Justice LAWTON
Sir Donald FINNEMORE
The Honourable Mr. Justice JAMES
The Common Serjeant, Mr. J. M. G. GRIFFITH-JONES, M C
Professor Rupert CROSS
Professor D. R. SEABORNE DAVIES
Mr. J. B. R. HAZAN, Q C
Sir Kenneth JONES, C B E
Sir Frank MILTON
Mr. David NAPLEY
Mr. William SCOTT
Sir Norman SKELHORN, K B E, Q C
Professor J. C. SMITH, *Co-opted member*
Professor Glanville WILLIAMS, Q C

Mr. J. NURSAW, *Secretary*
Miss B. R. PUGH, *Assistant Secretary*

NOTES

Sir Frederic Sellers was a member of the committee when the subject of offences against the person was referred to them and took part in their consideration of it until he retired from the committee in July 1972.

The late Judge Malcolm Morris, Q C, was a member of the committee when the subject of offences against the person was referred to them and took part in their consideration of it until his death in October 1972.

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CRIMINAL LAW REVISION COMMITTEE

TWELFTH REPORT

Penalty for Murder

To the Right Honourable ROBERT CARR, MP, *Her Majesty's Principal Secretary of State for the Home Department.*

INTRODUCTION

1. On 4th March 1970 the then Home Secretary, the Right Honourable James Callaghan, asked us:

> "To review the law relating to, and the penalties for, offences against the person, including homicide, in the light of, and subject to, the recent decision of Parliament to make permanent the statutory provision abolishing the death penalty for murder."

We must stress therefore at the outset that any question relating to the restoration of the death penalty for murder is outside our terms of reference.

2. We are concerned only with the criminal law of England and Wales. In September 1970 the Secretary of State for Scotland announced that, in consultation with the Lord Advocate, he had decided to set up a committee, under the chairmanship of Lord Emslie, to enquire into the penalties for homicide in Scotland. As will be seen from the report of that committee which has now been published(1) the terms of reference of the Scottish Committee were considerably narrower than our terms of reference. The two committees kept in touch with each other by exchanging papers and by meetings between the two chairmen from time to time.

3. This report relates solely to the question of the penalty for murder and differs from our previous reports in that the views we express in it are provisional. We did consider at an early stage of our work on this reference whether we should produce an interim report on homicide because of the widespread public concern about the penalty for murder, and because of the expectation that the Scottish Committee might well be in a position to report earlier than we could in view of their much narrower terms of reference. As a result of debates in the House of Commons on the Criminal Justice Bill(2), we again considered whether we should make an interim report. At both stages in considering this question we have felt that it was important that we should present our conclusions on offences against the person as a balanced whole and that conclusions on homicide should be considered in the light of our conclusions about the law relating to other offences against the person. As was said on the report stage of

(1) Cmnd. 5137. The terms of reference were "To review the law relating to the penalties for homicide in the light of the statutory abolition of capital punishment for murder and to report on the considerations that should govern any proposal for a change in that law".

(2) Now the Criminal Justice Act 1972 (c. 71).

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the Criminal Justice Bill, all the subjects we are considering on this reference are very much interlocked and to make a change in one area is difficult without affecting other areas.

4. Our preference would still be to make one final report covering the whole field of our review of the law relating to offences against the person. But the report of the Scottish Committee has now been published(1). In view of the public discussion which there will be about the recommendations contained in that report, we feel that we should make our present views known so that the arguments for and against any changes as they appear to both committees can be considered together. The views we express in this report on the penalty for murder are provisional and if, when we have completed our survey of the law relating to offences against the person and have taken into account any observations that may be made on the provisional views now expressed, we reach any different conclusions, we shall not hesitate to say so in our final report.

5. When we were asked to review the law relating to offences against the person we began by consulting a number of persons and bodies concerned with the administration or teaching of the law about the matters within our terms of reference. In addition, the Chairman sought the views of all the Lords of Appeal and judges of the Supreme Court, the judges of the Central Criminal Court and a number of recorders and chairmen of what were then quarter sessions. The views we received were of great help and interest to us. The committee has had the assistance of Professor J. C. Smith, Professor of Law in the University of Nottingham, who was co-opted as a member of the committee for this reference. The report of the Home Office Statistical Division "Murder 1957 to 1968" was also of particular interest and help.

6. We first considered whether there should continue to be a separate offence of murder and, if so, whether the existing definition of murder at common law was satisfactory. It is sufficient for present purposes to say that, although it might be argued that by reason of the abolition of the death penalty for murder there was no longer the same need to draw a distinction in cases of homicide between murder and manslaughter, we are of the opinion that there should be a separate offence of murder. We believe that the stigma which, in the public's mind, attaches to a conviction of murder rightly emphasises the seriousness of the offence and may have a significant deterrent value. We do not propose to discuss in this report our views on what the definition of murder should be; this is a matter which will be dealt with in our final report.

PRESENT PENALTY FOR MURDER

7. Since the abolition of the death penalty for murder, a person so convicted (unless under 18 at the time the offence was committed) must be sentenced to imprisonment for life under section 1 (1) of the Murder (Abolition of Death Penalty) Act 1965 (c. 71). On imposing such a sentence the court may declare the period which it recommends to the

(1) On 29 November, 1972, the Penalties for Murder Bill, introduced by Mr. Edward Taylor, was read the first time. That Bill seeks to implement the recommendations of the Scottish Committee.

Secretary of State as the minimum period which in its view should elapse before the Secretary of State orders the release of that person on licence (section 1 (2) of the 1965 Act). Under section 61 of the Criminal Justice Act 1967 (c. 80) the Secretary of State may, if recommended to do so by the Parole Board, release on licence a person serving a sentence of imprisonment for life but shall not do so except after consultation with the Lord Chief Justice and, if available, the trial judge. The Secretary of State may revoke the licence of any person released under section 61 of the 1967 Act and recall him to prison when recommended to do so by the Parole Board. Where this is expedient in the public interest and it is not practicable to consult the Parole Board, he may do so without consulting the Board although they will consider the case subsequently. A person convicted of murder committed when he was under 18 is sentenced to be detained during Her Majesty's Pleasure and is then liable to be detained in such place and under such conditions as the Secretary of State may direct (section 53 (1) of the Children and Young Persons Act 1933 (c. 12) as substituted by section 1 (5) of the Murder (Abolition of Death Penalty) Act 1965). The procedure for releasing a person on licence under the Criminal Justice Act 1967 described above applies equally to those sentenced to be detained during Her Majesty's Pleasure.

8. The procedure governing the release on licence of life sentence prisoners is as follows. Each case is carefully considered at an early stage and a date is fixed for review, normally after 4 years, though in appropriate cases a review may be held earlier. Reports are called for from the prison, including reports by the Governor, the Assistant Governor, the Medical Officer and the Chaplain, and in some cases where there is an element of mental instability there will also be further psychiatric reports. This review at 4 years is carried out by the Home Office, its main purpose being to decide whether exceptionally the local review committee should be asked to review the case before the prisoner has served 7 years. There is a local review committee for every prison. These were set up under the Local Review Committee Rules 1967(1) made under section 59 (6) of the Criminal Justice Act 1967. The practice has been to seek the views of the local review committee after an offender has served 7 years, whether or not it appears likely that a provisional release date can reasonably be fixed. The reports from the prison and the local review committee's recommendation are then considered in the Home Office and, if it is thought that there is a possibility of a provisional release date being fixed, the views of the Lord Chief Justice and the trial judge, if he is available, are obtained. All cases, whether a release date is proposed or not, are then considered by the Parole Board. The Board either recommend a provisional release date (usually 12 months ahead) or, if release is not recommended, the time of the next review. Supervision by a probation officer is usually a condition of the licence and other conditions may be added (*e.g.* a condition of psychiatric supervision) where appropriate. The conditions may be cancelled when the licensee has shown that he has settled down satisfactorily in the community, but the licence remains in force for life and the licensee may be recalled to prison at any time should his conduct give cause for concern. A person who

(1) S.I. 1967/1462.

has been recalled may make representations to the Parole Board, who may, if they think fit, order his release. In 1970, 160 life sentence cases(1) were considered by the Parole Board and 44 were recommended as suitable for release on licence at a date about a year ahead, subject to good behaviour in the meantime. The Secretary of State accepted the Parole Board's recommendation in 38 cases. Four of these were recall cases(2), two of whom were released immediately after their recall on the consideration of their representations by the Parole Board. In the other two recall cases both had previously served 9 years before release; one had served 1 year and the other 2 years since recall. The remaining 34 cases served the following periods before release:

Number of complete years served	3	4	8	9	10	11	12	14	16
Number of cases	2	1	4	11	7	1	3	4	1

In 1971, 124 life sentence cases were referred to the Parole Board and of these 41 were recommended for release. Since 12 months' notice of release is given it is not yet possible to say how many of these will be released in consequence of these recommendations.

9. The approach of the Parole Board to life sentence cases is described in their report for 1970 in the following way:

> "While the Board will always have in mind the gravity of the offence in dealing with determinate sentences, this is only of major importance where to grant parole would defeat the purpose of the sentence or would endanger the confidence of the public. In determinate sentences consideration by the Board is not a sentencing operation because the sentence has been fixed by the court. With life sentences, however, the sentence is indeterminate and our function assumes a sentencing character, because there is no fixed term. The question is not simply whether the conditions, bearing in mind the nature of the offence, are such as to justify granting parole. The primary question is whether the time served is appropriate to the crime. Before parole was introduced, the sole responsibility for releasing life prisoners rested upon the shoulders of the Secretary of State after consultation with the Lord Chief Justice and the trial judge if available. Now the Act not only provides for this consultation but also provides that the Secretary of State cannot release without a favourable recommendation from the Parole Board.
>
> When the Board considers the possible release of a life prisoner, therefore, it is provided with the views of the Lord Chief Justice and the trial judge. Furthermore, whenever life cases are being considered one of the judicial members of the Board who is a High Court Judge always attends the panel meeting so that the sentencing aspect may be fully represented.

(1) The majority of which were cases of murder. Further details relating to the consideration by the Parole Board of life sentence cases and to the length of detention of murderers released from prison are set out in Tables A and B in the Appendix.

(2) That is cases where a life sentence prisoner had been released on licence, recalled and then considered for release again.

The problems involved in releasing life prisoners are different from most of those in determinate sentence cases because of the length of time which has been spent in prison and away from everyday life. After 10 or more years in prison it is not sufficient for us to be satisfied that the time served is appropriate to the crime and that the risk of repetition is absent and that there is no reason to expect any misbehaviour after release. It is necessary also to prepare the man for release by a process of relaxation of the conditions of imprisonment. Accordingly, when we recommend release we normally do so by proposing a provisional date 12 months in advance, and sometimes by way of the pre-release employment scheme. One result of this is that the Board frequently does not have a clear plan of residence and work for the man's release and these have to be left to the Welfare Department of the prison and the probation service to arrange as the day for release draws nearer." (1)

CRITICISMS OF THE MANDATORY LIFE SENTENCE

10. Since a number of criticisms have been made of the present mandatory life sentence, it seemed that the first matter for us to consider was what, if anything, was wrong with it. It is said that persons sentenced to life imprisonment seldom serve more than 9 years and that, therefore, criminals may believe that they have nothing to lose in committing murder in order to avoid identification for some other serious offence, *e.g.* robbery, for which, if convicted, they may well serve a sentence at least as long as 9 years. If criminals do believe this they do so under a misapprehension and we feel that it is important that they, and the public, should realise that it is wrong to assume that a person sentenced to life imprisonment for murder will be released after serving only 9 years. This misunderstanding has its origin in the practice prevailing before the passing of the Homicide Act 1957 (c.11). Until then murderers were executed unless there were mitigating circumstances justifying clemency. If a reprieved murderer made good progress in prison, and there were reasonable grounds for thinking that he would not resort again to serious violence, it was often thought right to let him out after 9 years, a period which, allowing for remission, is the equivalent of a fixed term sentence of over 12 years—and it was exceptional for longer fixed terms to be imposed for any offence.

11. The 1957 Act changed the situation. It provided that there should be two classes of murder. One was capital murder, where the offence was one of a group considered particularly serious. This continued to attract the death penalty. Other murders ceased to be capital, although those convicted of such murders would, in the absence of mitigating circumstances justifying a reprieve, have been executed before the passing of the Act. Thus there began to grow in our prisons a nucleus of murderers very different from those found there before the 1957 Act. The passing of the Murder (Abolition of Death Penalty) Act in 1965 greatly expanded the process started by the 1957 Act, with the result that there grew up a very

(1) Report of the Parole Board for 1970, paragraphs 47–49.

considerable population of murderers of the more brutal and hardened type. Whereas in 1957 there were about 120 murderers in prison who had been reprieved, in August this year there were 665, many of whom would not have been reprieved but executed if the law had not been changed. Government policy regarding the release of life sentence prisoners has had to take account of this change. When these cases are considered, each one is carefully scrutinized, the nature of the crime and the safety of the public being the two principal considerations taken into account. Of the 869 life-sentence prisoners (including 665 murderers) in August 1972, 96 had already served more than 9 years. Table C in the Appendix shows the periods served by these prisoners up to that date. Many of these prisoners may be expected to serve a good deal longer, as will many of their fellows who have not so far served so long. Successive Home Secretaries have time and again made it clear that, where the circumstances so require, persons sentenced to life imprisonment will have to serve very long terms indeed and in some cases the offender may have to be detained for the rest of his natural life.

12. Another criticism made about the mandatory life sentence is that it obliges a judge to sentence a person to life imprisonment despite the judge's knowledge that, whatever the period the offender may serve in prison, it is unlikely that he will in fact be detained for the rest of his life. This does not seem to us to be a valid criticism (except perhaps in relation to certain tragic cases which we discuss later in paragraph 42 of this report). The essence of the life sentence is the *liability* to be detained for life; however long or short a period a life sentence prisoner has actually served before he is released on licence, he remains subject to recall for the rest of his life. In the case of a determinate sentence of, say, 30 years, the liability is to detention for 30 years, but the prisoner could be released on parole after serving 10 years and, in any event, because of the effect of remission, would be unlikely to serve more than 20 years. The liability to recall would in the ordinary case cease after 20 years and could not in any case continue beyond the end of the 30 years.

13. Some are against the life sentence for murder because they are opposed in principle to a mandatory sentence, since the judge is thereby deprived of the power, which he possesses in all other cases, to distinguish between murders of different gravity by the sentences he imposes and since he cannot take into account any matters of mitigation. Professor Glanville Williams is against the mandatory life sentence for murder for this reason. The other members of the committee do not share his view for the following reasons. Apart from the trial judge's power to make a recommendation under the 1965 Act, the judiciary is involved in the determination of the length of sentence served by those convicted of murder. It is well represented on the Parole Board by three High Court Judges and two circuit judges and, as stated in paragraph 7, the Lord Chief Justice is consulted in every case before a murderer is released on licence, as is the trial judge, if available. Without a recommendation from the Parole Board, the Home Secretary cannot release a person on licence under section 61 of the Criminal Justice Act 1967. Thus it will be seen that, particularly since 1967, the judiciary do play an important part in determining the length of sentence

to be served by those convicted of murder and that this is no longer a matter entirely in the hands of the executive. As is said in the extract from the report of the Parole Board for 1970 quoted above(1), a High Court Judge always attends the panel meeting of the Parole Board when a life sentence case is being considered.

DETERMINATE SENTENCE AS AN ALTERNATIVE TO THE MANDATORY LIFE SENTENCE

14. These criticisms of the mandatory life sentence have led some to suggest that instead of the mandatory life sentence for murder there should be power in the court to impose a determinate sentence within a maximum of life imprisonment as in the case of manslaughter and certain other offences. It is said that a determinate sentence would meet the criticisms of the mandatory life sentence to which we have referred above in paragraph 13 and allow the judge to ensure that, by imposing a long determinate sentence, a murderer was not released from prison after serving only nine years.

15. Another argument that is sometimes advanced is that a determinate sentence would act as a greater deterrent than the indeterminate life sentence on the ground that, the more severe a penalty is, the greater is its deterrent value. In our opinion the argument that a determinate sentence for murder would have greater deterrent effect is put forward on a mistaken assumption as to the length of time actually served by a life sentence prisoner. We have shown above that the belief that a life sentence prisoner is released after a period of nine years is erroneous. A sentence of life imprisonment is potentially more severe than any determinate sentence likely to be imposed. The effect of remission and parole must not be forgotten. In the case of, say, a 30 year sentence, the prisoner knows that if he behaves himself in prison he must be released after 20 years and may be released on licence at any time after 10 years (although release on licence is unlikely if there is the risk of further violence). We are confident that, when it is seen that some life sentence prisoners remain, as we feel sure they will, in prison for extremely long periods and some, it may be, for the rest of their lives, the severity of the life sentence will become apparent to the public. In our view the life sentence can have a greater deterrent effect than a determinate sentence because it is potentially more severe and we hope that everything possible will be done to make clear to the public the reality of the situation.

16. Another fundamental objection to the suggestion that there should be a determinate sentence for murder in place of the present mandatory life sentence is the difficulty that the trial judge would have in sentencing a person convicted of murder to a fixed term of years. Although it is said that the trial judge is in the best position to know what length of sentence the murderer should serve, we do not agree that the judge is in the best position to safeguard the interests of the public by imposing a determinate sentence. It is particularly difficult in cases of murder to predict at the time of sentence whether the murderer in question will have to be detained indefinitely or not, or at what stage of his sentence he will become unlikely to

(1) Paragraph 9.

kill again. A murderer who has to be detained for a long period for the protection of the public may not necessarily have committed the most heinous murder nor have a record of violence.

17. A further most important objection to a determinate sentence for murder is that when a prisoner has completed the whole of his sentence, he *must* be released, even though it may not be safe to do so from the public's point of view. Even if the prisoner has been transferred to a hospital under section 72 of the Mental Health Act 1959 (c. 72) the special restrictions on discharge will end when his sentence expires. If a person serving a determinate sentence is detained in prison until the expiry of his sentence, he is not subject to any compulsory supervision on release. After a person has been convicted of murder, the public has a right to expect to be protected from him in the future; this can be so only if a sentence has been passed which does not of necessity come to an end at a particular time. There is no power of recall once a determinate sentence has expired. In order that a person convicted of murder may be recalled to prison at any time during the rest of his life, it is necessary that he should be liable, under his original sentence for murder, to be imprisoned for the whole of his life.

18. If a determinate sentence were to be given for murder, this would put the offence, as regards sentence, on a par with manslaughter and other offences which at present carry a maximum of life imprisonment. If it is thought (and this is our view, as stated above[1]) that murder should remain a separate offence distinct from manslaughter, we feel that this should be reflected by a wholly different and more serious penalty. At the moment murder is singled out from all other offences by attaching to it a mandatory sentence of life imprisonment; and this serves to emphasise the gravity of the crime.

19. It will be seen from the foregoing paragraphs that we are in substantial agreement with what is said by the Scottish Committee in paragraph 50 of their report where they reject the argument that the trial judge should determine when the offender ought to be released.

OTHER ALTERNATIVES TO THE MANDATORY LIFE SENTENCE

20. It was suggested during a debate on the Criminal Justice Bill in 1972 that the court should, in effect, be given a discretion in cases of murder to impose either a life sentence or a sentence for a fixed number of years and to order in the latter case that the offender should not be released except on licence for life; and that the Secretary of State should be able to apply to the court to substitute a life sentence for the fixed sentence if necessary for the safety of the public. We considered this and two alternatives. The first of these was a suggestion that the court should be able to impose a determinate sentence with a maximum of 20 years, with a power reserved to the Court of Appeal, on application by the review authorities, to extend the sentence originally imposed. The second of these was a proposal under

[1] Paragraph 6.

which a judge would impose a sentence of life imprisonment together with, if he thought fit, a sentence for a fixed number of years on the expiry of which the prisoner would have to be released. The determinate part of the sentence would be subject to remission and parole but the prisoner would be liable to recall for the rest of his life.

21. The difficulty with all these proposals is that the "determinate sentence" proposed is of an artificial nature. The problem is what is to happen when a prisoner sentenced to fifteen years for murder has served ten years and has been a model prisoner earning one-third remission. In these circumstances the question is whether he must be released even though all the reports suggest that he would be likely to kill again. Under one of the proposals the Court of Appeal would consider the case and would extend the sentence but it seems to us unlikely that that Court, and indeed the general public, would regard it as a proper function of the judiciary to increase a sentence ten years after it was originally pronounced. We think that this would be rightly criticised as an attempt to retain life sentences while disguising them as determinate sentences. The solution adopted in another proposal is to couple the determinate sentence with a life sentence so that, although the prisoner has to be released on the expiry of the determinate sentence, he can be recalled to prison at any time thereafter. We do not think it would be generally regarded as acceptable for a person convicted of murder and released after serving a fixed number of years imposed by the trial judge to be recalled to prison by administrative action and detained there perhaps for the rest of his life. There is a significant difference between recalling a person to prison after his release by the Home Secretary on the recommendation of the Parole Board and recalling a person to prison during the currency of his sentence after his automatic release on the expiry of a fixed number of years imposed at his trial. The person who has received a life sentence has no justifiable grounds for complaint if he is released and then recalled to prison since his release is a benefit which is not guaranteed by his sentence. A person who is recalled to prison after his determinate sentence has expired, however, might well have a grievance over his recall and his consequent liability to be detained for the rest of his life and we feel that his grievance would have some justification.

ADVANTAGES OF THE MANDATORY LIFE SENTENCE

22. We believe that there are overwhelming advantages in the mandatory life sentence for murder. The flexibility of the life sentence enables those concerned with the release of the offender to take into account both the interests of the public and of the offender himself. Indeed, it seems to us that the imposition of the life sentence is the only practicable way of safeguarding the public against the compulsory release of one who may still remain a menace to society. It is also a merciful way of enabling offenders in less heinous cases to be released after serving appropriate periods when it is apparent, after a period of observation, that there is little or no element of public danger. The life sentence also enables account to be taken of any deterioration after the prisoner has been released on licence since he is subject to recall to prison for the rest of his life. There has been a particularly striking illustration recently of the use of this power of recall in the case of a

person sentenced to death for murder in 1948, whose sentence was commuted to life imprisonment. After his release on licence from the life sentence, and 23 years after the sentence was imposed, he committed offences, which, although not in themselves particularly serious, showed that the proclivities which had led to the murder still motivated him and the Home Secretary accordingly revoked his licence. We contrast this with what the position would have been if the original sentence had been one of 30 years and the prisoner had earned full remission; then he would have been free of the sentence after 20 years and it would not have been possible to take this action for the protection of the public. The mandatory sentence does demonstrate, as no other sentence does, that a person, by murdering another, surrenders his own life to the extent that he will *always* be subject to detention, supervision or liability to recall.

23. We are thus fully in agreement with the Scottish Committee in concluding that the mandatory life sentence for murder should be retained and for substantially the same reasons as those set out in their report. When we come to deal in our final report with offences involving violence other than murder one of the matters we shall have to consider is whether the courts should not as a matter of policy impose an indeterminate sentence in cases where the offence is of such a kind as to indicate that the offender may pose a continuing threat to society.

RECOMMENDATIONS UNDER SECTION 1 (2) OF THE 1965 ACT

24. As we have mentioned in paragraph 7, under section 1(2) of the Murder (Abolition of Death Penalty) Act 1965 the judge may, in sentencing a person convicted of murder to imprisonment for life, recommend the minimum period which in his view should elapse before the offender is released on licence, although such recommendation is not binding. This provision was introduced as an amendment moved by the then Lord Chief Justice, Lord Parker, during the passage of the 1965 Act and it made statutory the then existing position under which a judge could make his view known informally by writing to the Home Secretary. This provision, in Lord Parker's words " preserves the right, for which I have been striving so long, of the trial judge to mark the gravity of the offence, the revulsion of public feeling, in a proper case by giving what appears to be a very long sentence, which it is hoped will deter others and afford some protection to the police, in particular ".(1)

25. In recent years the effective control by the judiciary has increased in two ways. First, since 1965 there has been a statutory requirement to consult the Lord Chief Justice and the trial judge, if available, before a life sentence prisoner is released on licence. More than 250 life sentence cases have been referred to the Lord Chief Justice in the period from April 1968 to October 1972. In only 7 of these cases has the Home Secretary accepted a recommendation to release by the Parole Board against the views of the Lord Chief Justice. Second, since 1967 the judiciary has taken part in the review of life sentence cases by serving on the Parole Board. The power

(1) Official Report, vol. 269, col. 419, 5 August 1965.

given to the court to recommend a minimum period under section 1 (2) of the 1965 Act has been exercised comparatively rarely in practice and, when the court has exercised it, it has done so to emphasise its view that the case calls for a very long period of imprisonment. From the coming into force of the 1965 Act until the end of July 1972, life imprisonment has been imposed for murder in England and Wales in 503 cases (excluding cases in which persons under 18 convicted of murder are sentenced to detention during Her Majesty's Pleasure) and recommendations have been made in 42 (or about 8 per cent) of these cases. The length of the recommended periods has varied from 10 years to life. The number of recommendations made and the length of the periods are as follows:—

1 recommendation for 10 years
2 recommendations for 12 years
13 recommendations for 15 years
1 recommendation for 17 years
13 recommendations for 20 years
4 recommendations for 24 years([1])
7 recommendations for 30 years
1 recommendation for life([2])

26. The Scottish Committee have stated their view that it would be advantageous if section 1 (2) of the 1965 Act were amended so as to *require* the court, in sentencing any person convicted of murder to life imprisonment, to make a recommendation in *every* case except in (undefined) exceptional circumstances([3]). In their view such an amendment would increase the deterrent effect of the penalty for murder and ensure that the judiciary played a greater part in implementing the penalty. In our view a judge should not be required to make a recommendation in virtually every case. This is also the unanimous view of the Lord Chief Justice and the Queen's Bench Judges.

27. We agree with the Scottish Committee that the deterrent effect of the penalty for murder is most important. But, as we explain in paragraph 31, we are not convinced that a recommended minimum period in almost every case would have the desired result of sharpening the deterrent effect. They also said that the making of a recommendation in almost every case would enable a judge to say what custodial element was necessary for the purpose of deterrence and prevention, whereas at the present time he plays virtually no part at all in determining the length of time a murderer is detained in prison. This is not the position in England and Wales in view of the fact that, as mentioned above—and in addition to the necessity to consult the Lord Chief Justice and the trial judge, if available, before release—three High Court Judges serve on the Parole Board. This has not been the position in Scotland although the Scottish Committee suggested that a High Court Judge should be appointed as a member of the Scottish Parole Board([4]). In addition to this, there do seem to us to be a number of objections to this suggested amendment of section 1 (2).

([1]) In one of these cases the offender was transferred to Rampton Hospital under section 72 of the Mental Health Act after serving one year in prison.
([2]) See paragraph 30 post.
([3]) Cmnd. 5137, paragraphs 92–95.
([4]) Cmnd. 5137, paragraph 101. Lord Wheatley was appointed a member of the Scottish Parole Board in November 1972.

28. As we have said before in considering the possibility of replacing the indeterminate life sentence by a determinate one, the trial judge may well not have sufficient information available to him at the time of trial to enable him to know what minimum period to recommend. If the trial judge were required to fix a minimum period in every case, he might be put in a position of great difficulty in having to do so in circumstances in which he did not really feel able to determine the appropriate period. This might be so particularly in a case in which there was evidence or suspicion of mental instability.

29. As we have already seen(1), at present recommendations are made in few cases and where they are made they are for substantial periods. Although in some of these cases a prisoner will, no doubt, have to be detained beyond the minimum period recommended, such cases are likely, with the present use of recommendations, to constitute only a small proportion of the total number of those serving life sentences for murder. But if a judge were required to make a recommendation in almost every case, there would inevitably be recommendations of short minimum periods and it might very well be that in a substantial number of cases a prisoner would have to be detained for a very long time beyond the recommended minimum period on public safety grounds. The detention of a prisoner in these circumstances might well create difficulties for the prison staff for the prisoner would regard the period specified by the judge as some indication of how long he should be detained and might become motivated by a sense of injustice if detained substantially longer.

30. In the most serious type of case, the trial judge may be inclined to doubt whether the prisoner can ever safely be released. In our view it would be undesirable in these circumstances for a judge to recommend that the prisoner should be detained for the rest of his natural life. The effect of such a recommendation on the prisoner himself must be borne in mind. Considerations of humanity suggest that it would be wrong to deprive a prisoner of all hope, and there are also practical considerations which point to the same conclusion. He has nothing to gain from good behaviour in prison and there is no factor such as loss of opportunity of eventual release on licence which might deter him from a violent attack on a prison officer. Nor would it be right for a judge to recommend a period of, say, 20 years in a case in which he takes the view that it is unlikely that the prisoner can ever be released. In our view, it is preferable in such a case for the judge, instead of making a recommendation, to explain that in a case of such gravity there is no minimum period which he feels he can reasonably recommend and that consideration of the likely date of release on licence is best left to the authorities concerned. In these cases a *requirement* to make a recommendation would in our view be quite inappropriate.

31. We do not feel that in the less heinous cases the making of a recommendation serves any useful purpose. If the intention in requiring recommendations to be made in almost all cases is thereby to increase the deterrent effect of the penalty for murder, it is difficult to see how this is achieved by a recommendation of a short period. Indeed such a

(1) Paragraph 25.

recommendation may diminish the deterrent effect and undermine public confidence in the administration of justice if it appears on the face of it, to those who do not know all the facts of the case, and who perhaps rely on headlines in the press, that, for example, four years is recommended as the period to be served by a murderer. It seems to us that if the power to make recommendations is exercised sparingly and only in the most serious cases, in which it is in the nature of things unlikely that the accused would be released before serving the length of the minimum period recommended (assuming that the judge feels able to specify a period, which may not be so even in the most serious case), the deterrent effect is greater than if recommendations are made in almost all cases. At present recommendations receive great publicity and the impact would, we feel, be diminished if they became so usual that little or no publicity were given to them. In our view the value of recommendations at the present time depends upon the fact that they are made only exceptionally and not as a matter of routine.

32. Of all offences, the circumstances in cases of murder vary so considerably that if a recommendation had to be made in almost every case there would probably be a considerable disparity in the length of the recommendations made and such a disparity would not necessarily be satisfactorily corrected even if, as we suggest later in this report(1), a recommendation is appealable.

33. In our view the power to make a recommendation does serve a useful purpose, utilised as it is at present in those comparatively few cases in which the court feels it appropriate to recommend a minimum period. We feel, however, that when the severity of the life sentence becomes apparent to the public and they no longer believe that a person convicted of murder seldom serves more than nine years, the justification for recommendations may well disappear. Our provisional view is that, for the time being, section 1 (2) of the 1965 Act should remain in its present form, so that the making of a recommendation is entirely a matter of discretion for the trial judge. If he is of opinion that some useful purpose would be served by taking that course in a particular case, then he can do so.

34. We must point out that we have had in mind in considering all these matters that the 1965 Act has been in force for only seven years. We feel sure that the Parole Board together with the Home Secretary and the Lord Chief Justice will attach great weight to any recommendation; but no case in which a recommendation has been made has yet been considered by the Parole Board. We feel that the system under the 1965 Act, together with the changes made by the Criminal Justice Act 1967, must be allowed to operate for a longer period in order to see how it really works in practice and whether any deficiencies are revealed. Seven years are not long enough for this, and we are not convinced that any serious deficiencies in this system have yet come to light. This is an additional reason why we do not agree with the Scottish Committee's view that the law should now be changed to require recommendations to be

(1) Paragraph 36.

made in virtually every case. Although we have expressed the view that the time may well come when the justification for recommendations will disappear, our provisional view is that at present the existing position with regard to recommendations should remain.

35. We also considered (as did the Scottish Committee[1]) whether the power of a judge to recommend a minimum term under section 1 (2) of the 1965 Act should be amended so that the minimum period is not just recommended but is a *binding* stipulation which must be followed. The arguments in favour of such a proposal are that a stipulated minimum period would have a high deterrent value because the judiciary would be seen to exercise control over periods served by life sentence prisoners in prison and that it would give the public confidence in the most severe sentence available. For the reasons which we have given for opposing the suggestion that a determinate sentence for murder should replace the present indeterminate life sentence, we are against this proposal too. Briefly, a stipulated (as opposed to a recommended) minimum period would not permit the earlier release of a prisoner who had responded well to treatment. Thus a stipulated minimum period would diminish the flexibility of the indeterminate sentence. Secondly, an indeterminate sentence with a long stipulated minimum period before the expiration of which there was no hope of release, might well have a harmful effect on the prisoner's response to treatment and cause considerable problems for the prison authorities. In any event, we feel sure that great weight will be attached by the Parole Board and by the Home Secretary to any minimum period recommended by the trial judge and that it would be over-ridden only in exceptional circumstances; but there is the flexibility with a recommended, as opposed to a stipulated, minimum period which would enable this to be done where necessary. We are not, therefore, in favour of a system of stipulating minimum periods replacing the existing power to recommend minimum periods.

36. There is at present no right of appeal against a recommendation made under section 1 (2) of the Murder (Abolition of Death Penalty) Act 1965. This was decided in *Aitken [1966] 1 W.L.R. 1076; 50 Cr. App. R. 204*, where it was said that any representation should be made to the Home Secretary[2]. The Scottish Committee think it desirable that the appeal provisions which apply in Scotland to determinate sentences (which include powers to increase as well as reduce sentences) should be available in the case of recommendations[3]. It is our view, too, that recommendations should be appealable in England and Wales. Here the Court of Appeal cannot pass a sentence of greater severity than that imposed on the appellant by the court below. We think that recommendations should be treated as part of the sentence and the provisions applying to appeals against sentence in the case of determinate sentences should apply equally to recommendations. This would have the effect that the Court of Appeal would have no power to increase the length of a recommendation; in our view this is right.

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(1) Cmnd. 5137, paragraph 97.

(2) An application for leave to appeal against a recommendation of 30 years was dismissed by the Court of Appeal in *Sewell* (*The Times, 6 December 1972*).

(3) Cmnd. 5137, paragraph 98.

37. Because the sentence for murder is mandatory, there is no plea in mitigation of sentence. In *Todd* [*1966*] *Crim. L.R. 557*, the Court of Criminal Appeal declined to lay down rules of practice as to what a trial judge should do before making a recommendation under section 1 (2) of the 1965 Act, saying that it must be left to the discretion of the judge in every case to make sure that he gave counsel for the prosecution an opportunity of mitigating and that he had before him any information which would be of value. It seems to us that if the trial judge is minded to make a recommendation, it is right that he should so indicate and invite the defence to make any representations they considered desirable as to whether a recommendation should be made at all and, if so, as to its nature.

38. The Scottish Committee also think that the trial judge should state publicly the factors on which he bases his recommendation or his reasons in the exceptional case for making no recommendation(1). But in our view he should have a complete discretion to state or not, as he wishes, the factors he takes into account in making a recommendation.

39. In the Scottish Committee's view it would be advantageous if the court sentenced a person convicted of murder "to imprisonment and to remain liable to imprisonment for the rest of [his] life".(2) We agree that such a form of sentence, which stresses the liability to imprisonment for life, is preferable to the present position under which a person over 18 is sentenced "to life imprisonment".

PENALTY ON THOSE UNDER 18 CONVICTED OF MURDER

40. There remains to be considered the position of a person under 18 convicted of murder. At present, a person so convicted who appears to have been under 18 at the time he committed the offence is sentenced to be detained during Her Majesty's Pleasure and is then liable to be detained in such place and under such conditions as the Secretary of State may direct (section 53 of the Children and Young Persons Act 1933 as substituted by section 1 (5) of the Murder (Abolition of Death Penalty) Act 1965). The provisions of the Criminal Justice Act 1967 relating to release on licence in the case of adults sentenced to life imprisonment apply equally in the case of those sentenced to be detained during Her Majesty's Pleasure. In our view there is something objectionable about the reference to a person being detained "during Her Majesty's Pleasure" and our provisional view is that a person under 18 convicted of murder should instead be sentenced to detention "in such place and for such period and subject to such conditions as to release as the Secretary of State may direct".

41. At present the power of a judge to recommend a minimum period under section 1 (2) of the 1965 Act does not apply in the case of a person under 18 convicted of murder. In the Scottish Committee's view the trial judge should be *required* to make a recommendation in these cases as in the case of adults. We respectfully disagree. For the reasons we have already given we dissent from the view that the judge should be required

(1) Cmnd. 5137, paragraph 94.
(2) Cmnd. 5137, paragraph 96.

to make a recommendation in such cases; indeed we think that recommendations of a minimum period in the case of persons under 18 should never be made. It seems to us that it will be particularly difficult for a judge to decide on the appropriate period where the youth of the offender is a factor to be taken into consideration and that there is an even greater need in such cases for the flexibility achieved by the imposition of an indeterminate sentence and this would be diminished by any recommendation as to a minimum period. Our provisional view is that the existing law under which a judge cannot recommend a minimum period in such cases should be retained. We are also opposed to the Scottish Committee's proposal that, in sentencing a person under 18 convicted of murder, the court should state publicly that he remains liable to detention for the rest of his life. It seems to us preferable in such cases that the full import of the sentence should be made known to the offender privately rather than in court.

RELAXATION OF MANDATORY LIFE SENTENCE

42. We mention earlier in this report(1) that there are certain tragic cases of murder to which special considerations apply. Examples we have in mind are those in which a killing was done deliberately from motives of compassion but there was insufficient evidence under the present law to justify a verdict of manslaughter on the ground of diminished responsibility—for example, where a mother killed her deformed child or a husband terminated the agonies of his dying wife. We can see the force of the argument that the mandatory imposition of life imprisonment is odious in such cases and indeed that no sentence of imprisonment is appropriate. We should like it to be possible for a judge to be able to make a hospital order under section 60 of the Mental Health Act 1959 or a probation order with or without conditions under section 4 of the Criminal Justice Act 1948 (c. 58) or for him to order a conditional discharge where he is satisfied that it would be contrary to the interests of justice for the accused to serve any sentence of imprisonment. But to achieve this result involves difficulties which we shall try to resolve, our provisional view being that special provision should be made for these cases. We shall return to this matter in our final report.

SUMMARY OF PROVISIONAL CONCLUSIONS

43. To sum up, our main provisional conclusions on the penalty for murder are:

(1) that the mandatory life sentence for murder should be retained (subject to (4) below) (paragraph 23);

(2) that the power of the court to make a recommendation as to the minimum period under section 1 (2) of the Murder (Abolition of Death Penalty) Act 1965 should be retained and that the law should be changed so that a recommendation becomes appealable (paragraphs 33 and 36);

(1) Paragraph 12.

(3) that a person under 18 convicted of murder should be sentenced to detention in such place and for such period and subject to such conditions as to release as the Secretary of State may direct; and that *no* recommendation as to the minimum term should be made in such cases (paragraphs 40 and 41);

(4) that we should give further consideration to the proposal that, in certain tragic cases of murder, a judge should be able to make a hospital order or a probation order or order a conditional discharge where he is satisfied that it would be contrary to the interests of justice for the accused to serve any sentence of imprisonment (paragraph 42).(1)

Edmund DAVIES, *Chairman*
Frederick LAWTON
Donald FINNEMORE
Arthur Evan JAMES
Mervyn GRIFFITH-JONES
Rupert CROSS
John HAZAN
Kenneth JONES
Frank MILTON
David NAPLEY
William SCOTT
Norman J. SKELHORN
John SMITH
Glanville WILLIAMS

J. NURSAW, *Secretary*
B. R. PUGH, *Assistant Secretary*

15 December 1972

Note: Professor D. R. Seaborne Davies has not thought it right to sign this report because he was obliged by other duties to be absent from most of the meetings when the committee considered the subjects dealt with in it.

(1) As indicated in paragraph 13, Professor Williams does not concur in provisional conclusions (1) and (2).

APPENDIX

TABLE A

RELEASE ON LICENCE OF LIFE SENTENCE PRISONERS

Life sentence cases considered by the Parole Board, May 1968–December 1971

Cases referred to Parole Board		451
Cases recommended for release		145
Cases not recommended for release		243
Recalls: licence based on Parole Board's recommendation		4
licensed before Parole Board became operative		22
released immediately on consideration of prisoner's representations		2
Cases referred for variation and cancellation of conditions, review of release date, etc.		35

Life sentence cases considered by the Parole Board 1971

Cases referred to the Parole Board		124
Cases recommended for release:		
Murder	34	
Manslaughter	7	
Other	Nil	
	—	41
Recommendations accepted by the Secretary of State		37
Cases not recommended for release		68
Recalls: licence based on Parole Board's recommendation		1
licensed before Parole Board became operative		4
released immediately on consideration of prisoner's representations		2
Cases referred for variation and cancellation of conditions, review of release date, etc.		8

TABLE B

LENGTH OF DETENTION OF MURDERERS RELEASED FROM PRISON OVER THE PAST 10 YEARS

Year of release	Served 1 year	Served 2 years	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Served 20 years or more	Total
1962	—	—	—	—	—	—	—	3	2	—	—	—	—	1	—	—	—	—	—	—	6
1963	—	—	—	1	—	—	—	3	3	1	—	—	—	—	—	—	—	—	—	—	8
1964	—	—	1	—	—	1	1	5	7	1	—	—	—	—	1	—	—	—	—	—	17
1965	—	—	—	—	1	—	3	11	4	1	—	—	—	—	—	—	—	—	—	2 (1 at 20 years 1 at 21 years)	22
1966	—	—	—	—	—	—	1	4	14	2	1	—	—	—	—	—	—	—	—	—	22
1967	1	—	—	—	1	—	5	4	7	2	—	—	—	—	—	—	—	—	—	—	20
1968	1*	—	—	—	—	—	2	5	12	—	3	2	—	—	—	—	—	—	—	—	25
1969	—	—	—	—	—	—	1	7	13	4	1	1	—	—	—	—	—	—	—	—	27
1970	—	—	—	1	—	—	1	3	12	6	—	1	—	—	—	—	—	—	—	—	24
1971	—	—	—	—	—	—	1	2	4	5	1	2	—	4	—	1	—	—	—	1 (at 24 years)	21
1972 ... ... (to 18 August 1972)	—	—	—	1	—	1	1	4	7	1	2	1	1	—	1	—	—	—	—	—	20
Total ...	2	—	1	3	2	2	16	51	85	23	8	7	1	5	2	1	—	—	—	3	212

* Served 6 months—mercy killing.

TABLE C

BREAKDOWN OF 96 LIFE SENTENCE PRISONERS WHO, ON 18 AUGUST, 1972, HAD SERVED NINE YEARS OR MORE

Years served	Murder	Manslaughter	Other offences	Total
20–21 ...	1	—	—	1
19–20 ...	—	—	—	—
18–19 ...	—	—	—	—
17–18 ...	—	—	—	—
16–17 ...	—	—	1	1
15–16 ...	4	—	1	5
14–15 ...	4	1	—	5
13–14 ...	7	1	2	10
12–13 ...	3	3	—	6
11–12 ...	11	3	—	14
10–11 ...	10	5	2	17
9–10 ...	32*	5	—	37
	72	18	6	96

* Includes 1 woman.

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The Times, January 4/73

Home Office Dept
Mr Whitelaw

REFORMING THE CRIMINAL LAWS 4/1/73

The Criminal Law Revision Committee's interim report on the penalty for murder is an extremely well argued document, but its conclusion that the mandatory life sentence for murder should be retained, together with the trial judge's discretionary power to recommend a minimum period of imprisonment in cases of particularly heinous killings, is unlikely to allay the widespread public concern about sentencing policy in respect of violent crimes. On the surface, it appears to many that a violent robber for instance, whose crime results in the death of an innocent party does not receive a sentence significantly harsher than the robber whose crime does not involve killing. Accordingly, the argument runs, there is little deterrent from committing murder if this is necessary in an attempt to evade justice.

The Committee rightly points out that much of the public criticism of mandatory life sentences is based on the incorrect assumption that persons sentenced to life imprisonment are released after the relatively short period of nine or so years. Certainly many convicted murderers do serve as little as that, or even less. But these are mostly those who have killed under strain arising from a domestic type of situation. Removed from the particular circumstances, they are extremely unlikely to kill again, or indeed to exhibit any violent tendencies. These people are not a danger to society.

The criminal who has indiscriminate tendencies to violence, for instance, the robber who kills in the course of his crime, is clearly not the type of prisoner who will be released after nine years, and Home Secretaries have made this abundantly clear since capital punishment was abolished. Unfortunately, it is only seven years since the mandatory life sentence for murder was introduced, and the proof that the really dangerous criminal will be kept in prison for a very long time cannot be established at this stage. Even in theory, however, an indeterminate life sentence is potentially always more severe than any determinate sentence, since the possibility always exists that the offender will spend the rest of his natural life in prison.

One of the positive proposals in the report is that a trial judge's recommendation as to the minimum period a prisoner serving a life sentence should remain in custody should be the subject of appeal. This accords with common sense. The judge's recommendation, even though not binding, will be an extremely influential factor when consideration is being given to whether or not the prisoner should be released. To that extent, the recommendation in effect determines the actual length of time to be spent in prison, and it would be unrealistic to suggest that it was not in fact part of the sentence imposed.

The Committee's hint that it is likely, in its final report, to recommend that in certain cases of mercy-killing a judge should be empowered to pass a non-custodial sentence is welcome, but a great deal of care must be taken in formulating the circumstances which would give rise to a successful plea that what was in fact an intended killing should not attract the mandatory life sentence. This is a difficult area of law and morality. It is reasonable to assume, however, that a potential murder charge acts as a deterrent to some persons contemplating, with the sincerest motives, performing a mercy-killing on someone close to them. This deterrent should not be completely removed by any change in the law which might encourage the taking of life, especially as the person closest to the sufferer is often unable to exercise that degree of judgment which is necessary to assess the real degree of suffering being endured, or the prospects of recovery.

The Times, January 4/73

'Life sentence for murder should be retained'

By Our Legal Correspondent

The Criminal Law Revision Committee has provisionally concluded that there should be no change in the law that obliges a judge to pass a sentence of life imprisonment for murder.

In a report on the penalty for murder the committee proposes that the power of the trial judge to recommend the minimum period to be spent in prison by a murderer should be retained, but that the law should be changed to allow an appeal against the recommendation.

The report's conclusions are only provisional, because the committee is reviewing the law relating to penalties for all offences against the person and its final conclusions on murder will be in its report on the wider topic. Questions relating to the restoration of the death penalty were not within its terms of reference.

One of the topics the committee is to consider further before making final recommendations is a proposal that in certain "tragic cases" of murder a judge should be able to pass a sentence other than one of life imprisonment.

The committee states its belief that a mandatory life sentence for murder has overwhelming advantages over determinate sentences. The flexibility of the life sentence enabled those concerned with the release of the offender to take into account both the interests of the public and the offender. It states:

> It seems to us that the imposition of a life sentence is the only practicable way of safeguarding the public against the compulsory release of one who may still remain a menace to society.

Moreover, the committee goes on, it was a merciful way of enabling offenders in less heinous cases to be released when it was apparent, after a period of observation, that there was little or no element of public danger. The life sentence also enabled account to be taken of any deterioration after the prisoner had been released on licence, since he was subject to recall to prison for the rest of his life.

> The mandatory sentence does demonstrate, as no other sentence does, that a person, by murdering another, surrenders his own life to the extent that he will always be subject to detention, supervision or liability to recall.

The committee refutes the belief held by some persons that convicted murderers sentenced to life imprisonment seldom served more than nine years in prison.

Each case of a prisoner serving a life sentence was scrutinized, the nature of the crime and the safety of the public being the two principal considerations taken into account. Successive Home Secretaries had made it clear that, where the circumstances required, persons sentenced to life imprisonment would have to serve very long terms indeed, and in some cases the offender might have to be detained for the rest of his natural life.

Another argument the committee rejects is that a determinate sentence would be a greater deterrent than the indeterminate life sentence. That argument, it says, was also put forward on the mistaken assumption as to the length of time actually served by a life-sentence prisoner. A life sentence was in fact potentially more severe than any determinate sentence.

> We are confident that when it is seen that some life-sentence prisoners remain, as we feel sure they will, in prison for extremely long periods and some, it may be, for the rest of their lives, the severity of the life sentence will become apparent to the public.

Another fundamental objection to the suggestion that there should be a determinate sentence for murder was the difficulty a trial judge would have in sentencing a convicted murderer to a fixed term of years. "We do not agree that the trial judge is in the best position to safeguard the interests of the public by imposing a determinate sentence."

The committee emphasizes that the judiciary retains a strong element of influence over the decision whether to release a prisoner serving a life sentence. There was a statutory requirement to consult the Lord Chief Justice and the trial judge before the Home Secretary could order release. In only seven cases had release been ordered against the Lord Chief Justice's opinion. The judiciary also took part in the review of life sentences by serving on the Parole Board. The power of a trial judge to recommend a minimum period of detention should be retained, the report states. The period of detention recommended should be the subject of appeal.

Criminal Law Revision Committee, Twelfth Report, Penalty for Murder (Stationery Office, 16p).

The Guardian, January 4/73

Life sentence is best deterrent for potential murderer, Carr told

BY OUR POLITICAL STAFF

Judges, lawyers, and academics tried to persuade the Home Secretary yesterday that the public would one day accept that a life sentence for murder which could be reviewed was as keen a deterrent to would-be murderers as a long, fixed sentence.

But the Home Secretary, Mr Robert Carr, has not yet decided whether to accept this recommendation from the Criminal Law Revision Committee. He is aware of the restlessness of his own backbenchers, many of whom want to restore the death penalty.

As a second best, they may vote for a private member's Bill sponsored by Mr Edward Taylor, Conservative MP for Glasgow Cathcart, which runs counter to the committee's proposals by introducing fixed sentences for murder. It will have a second reading soon after the Commons return this month.

Mr Taylor, said yesterday that he found it astonishing that the Law Revision Committee should appear to be satisfied with the present law. All the evidence showed, he said, that there had been "a hefty rise" in murder and other crimes of violence, and it was becoming increasingly clear that the life sentence in its present form was not an effective deterrent.

"I shall certainly be going ahead with my Bill, which this report goes completely against. Over the recess, I have had messages of support and encouragement from MPs in all parties," he said.

The committee of 15 members was asked in 1970 by the then Home Secretary, Mr Callaghan, to weigh up the effectiveness of life sentences for murder as against fixed sentences, since Parliament had voted to abolish the death penalty permanently.

No choice

All but Professor Glanville Williams, QC, came down firmly on the side of existing life sentences. Professor Williams argued that if a man was sentenced to life imprisonment for murder the judge would be deprived of the power to impose sentences for crimes of differing gravity.

But the other members, under the chairmanship of Lord Justice Edmund Davies, say, in what they emphasise is a provisional report: "The flexibility of the life sentence enables those concerned with the release of the offender to take into account both the interests of the public and of the offender himself."

The only change in the present system—introduced in 1965—which the committee recommends is that where a judge recommends the number of years which a murderer should serve, he can appeal. But the Court of Appeal cannot increase the recommended number of years but only decrease them.

The committee also objects to the phrase "detained during Her Majesty's Pleasure," which now applies to child murderers. They believe that it should be changed to "detained in such a place and for such a period and subject to such conditions as to release as the Secretary of State may direct."

The committee believed that public opinion was against the life sentence which was open to review because there was the feeling that some murderers served only nine years before their case was discussed and they were let out. They quote figures to show that 96 people in prison with life sentences had already served more than nine years. They also say that by last August there were 665 murderers in prison serving life sentences compared with 120 in 1957, before capital punishment was abolished.

They explain: "The passing of the Murder (Abolition of Death Penalty) Act in 1965 greatly expanded the process started by the 1957 Act, with the result that there grew up a very considerable population of murderers of a more brutal and hardened type."

The report emphasises that life imprisonment can be more severe than a determinant sentence. "We are confident that when it is seen that some life sentence prisoners remain, as we feel sure they will, in prison for extremely long periods and some, it may be, for the rest of their lives, the severity of the life sentence will become apparent to the public. In our view, the life sentence can have a greater deterrent effect than a determinant sentence because it is potentially more severe."

The committee also believes that at the time of the trial, the judge is not in the best position to safeguard the interests of the public by imposing a sentence for murder for a definite number of years.

On the other hand, the committee recommends that a judge should not be able to suggest that the prisoner should be detained for the rest of his natural life under a life sentence. "Considerations of humanity suggest that it would be wrong to deprive a prisoner of all hope," it says.

The committee says it wants to think further about tragic cases of murder, for instance, where a mother murders her deformed child, or a husband kills his dying wife. They believe that a judge should be able to make a hospital order, or a probation order, or even an order for a conditional discharge where he is satisfied that justice would not be served for the accused to go to prison.

○ In spite of protests from villagers, the Home Office is hoping to transfer the first batch of life-sentence prisoners to Sudbury open prison in Derbyshire by the end of this year. It is intended that Sudbury will eventually house 100 prisoners for the last year or two of their sentences.

Villagers at Sudbury objected to the plan because, they said, it contravened an undertaking given when the prison was first established, that it would accommodate only minor offenders. Outlining the size of the accommodation problem, the Home Office said yesterday that the figure of 860 men and women now serving life sentences for murder was five times greater than the total 10 years ago.

Criminal Law Revision Committee, 12th Report: Penalty for Murder. Cmnd 5184, S

ery Office, 16p.

The Daily Telegraph, January 4/72

MEANING OF LIFE

WHEN PARLIAMENT REASSEMBLES, it will consider a Private Member's Bill to be introduced by Mr EDWARD TAYLOR, providing that in future judges, when passing the mandatory life sentence for murder, should almost invariably recommend a minimum period to be served. The Bill will undoubtedly have strong support from many Tory backbenchers, who feel that the mandatory life sentence has become a dangerous mockery, often amounting to only a few years' imprisonment. Yesterday's report by the Criminal Law Revision Committee, however, in marked contrast to the recent findings of Lord EMSLIE's *Scottish Committee*, takes the view that judicial recommendations of this kind should continue to be the exception rather than the rule. In essence, it contends that anything approaching a determinate sentence for a particular murder (and a judicial recommendation amounts to something very like this) is objectionable on the ground that neither the trial judge nor the Court of Criminal Appeal can normally have the prescience to know when the murderer's release is likely to be compatible with the safety of society. There is also the difficult problem that, in some cases (mercy killings, for example), the recommended sentence would necessarily be short. This would greatly weaken the deterrent effect of the actual words of the life sentence.

These arguments make sound sense. As time goes on, it should become increasingly apparent that the kind of murderer who before 1965 would have been hanged has no chance of early release nowadays. What is astounding, however, is the committee's tentative suggestion that in certain tragic cases (no doubt "mercy killings" are again in mind) judges should be allowed to give a conditional discharge to the murderer. This would go far towards legalising involuntary euthanasia.

The Daily Telegraph, Jan. 4/72

KEEP MANDATORY LIFE JAIL FOR MURDER, SAY JUDGES

By TERENCE SHAW, Legal Correspondent

LIFE imprisonment should remain the mandatory penalty for murder and not be changed by judges having power to pass determinate prison sentences, says a report by the Criminal Law Revision Committee published yesterday.

The committee of five judges and leading practising and academic lawyers which advises the Home Secretary on the criminal law found that the flexibility of the present mandatory life sentence for murder offered the best protection for the public since abolition of the death penalty.

It was the "only practicable way" of safeguarding the public against the compulsory release of murderers who might still remain a danger to society.

It also enabled offenders in less heinous cases to be released after serving appropriate periods when there was little or no element of public danger.

Judges, say the committee, should continue to be able to recommend to the Home Secretary a minimum period that a murderer should serve in jail before he is released on licence.

But they should use the power sparingly, as at present, to maintain its effect.

They disagreed with a recent proposal by the equivalent committee in Scotland that judges should be required in all but exceptional circumstances to make a recommendation.

But they agreed with the Scottish committee that the law should be changed to allow convicted murderers to appeal against a minimum period recommendation.

Discretion in tragic cases

They intend to give further consideration to a proposal that in certain tragic cases of murder, a judge should be able to make a hospital or probation order or order a conditional discharge where he is satisfied that it would be contrary to the interests of justice for the accused to serve any sentence of imprisonment.

The committee headed by

for murder, together with penalties for other offences against the person, by Mr Callaghan, the former Labour Home Secretary, in March, 1970.

This followed widespread public concern that with the permanent abolition of the death penalty, the mandatory life sentence was not an adequate deterrent because of the belief that those sentenced to life imprisonment could expect to be released after an average of only nine years in jail.

Though its review of other offences is not yet complete, the committee has produced what it stresses are provisional views on the penalty for murder because of publication in November of the report of the Scottish committee, headed by Lord Emslie, the Lord Justice General.

A Penalties for Murder Bill, based on the Scottish committee's proposals was introduced in Parliament last month by Mr Edward Taylor, Conservative M P for Cathcart, who drew first place in the ballot for private members Bills. It is due to have its second reading on Jan. 26.

The Criminal Law Revision Committee says it feels it should make its present views known now so that the arguments for and against any changes in the law as they appeared to both committees could be considered together.

It adds that any question relating to restoration of the death penalty for murder was outside its terms of reference.

It is claimed, says the committee, that "criminals may believe that they have nothing to lose in committing murder in order to avoid identification for some other serious offence, for example robbery, for which, if convicted, they may well serve a sentence at least as long as

tant that they, and the public, should realise that it is wrong to assume that a person sentenced to life imprisonment for murder will be released after serving only nine years."

Misunderstanding over sentences

The misunderstanding had its origins in the practice before the Homicide Act, 1957, when all convicted murderers were executed unless there were mitigating circumstances justifying clemency.

Following the Homicide Act which introduced a division between capital and non-capital murder and the Murder (Abolition of Death Penalty) Act 1965, there had grown up a considerable population in prison of murderers of the more brutal and hardened type.

While in 1957 there were about 120 murderers in prison who had been reprieved, in August, 1971, there were 665, many of whom would not have been reprieved if the law had not been changed. Of the 869 life sentence servers in jail last August, 96 had already served more than nine years.

"Many of these prisoners may be expected to serve a good deal longer, as will many of their fellows who have not so far served so long."

Tables published with the report show that of the 212 murderers released on licence during the past 10 years, the great majority had been in jail for eight to 10 years. Eighty-five were released after nine years in jail, 51 after eight years and 23 after 10 years.

Three were released after 20 years or more the longest period served being 24 years. But the tables give no indication of the type of murder involved.

Successive Home Secretaries, says the committee, had time and again made it clear that where circumstances require, persons sentenced to life imprisonment will have to serve very long terms indeed and in some case the offender may be detained for the rest of his life.

Another criticism of the mandatory life sentence was that it obliged a judge to pass a life sentence knowing that it was unlikely that the offender would be detained for the rest of his life.

But it did not seem to the committee to be a valid criticism except in certain tragic cases when it was likely that an offender would be released after only a short time in jail.

The essence of the life sentence was the prisoner's liability to be detained for the remainder of his life and however long or short a period he stayed in jail

001537

Lord Justice Edmund Davies,

be released on parole after 10 years and because of the one-third remission rule for good conduct would be unlikely to serve more than 20 years. Prison could not in any event last more than 30 years.

The argument that giving judges power to impose a determinate sentence within a maximum of life imprisonment would have a greater deterrent effect was put forward on the mistaken assumption as to the length of time actually served by life prisoners.

"A sentence of life imprisonment is potentially more severe than any determinate sentence likely to be imposed.

Time will prove severity

"We are confident that when it is seen that some life sentence prisoners remain, as we feel sure they will, in prison for extremely long periods and some it may be for the rest of their lives, the severity of the life sentence will become apparent to the public."

Judges would face difficulty if given power to sentence murderers to a fixed term of years because of the problem of knowing at the time of sentence whether a murderer should be detained indefinitely or not, and when he would be unlikely to kill again.

A murderer who had to be detained for a long time for the protection of the public may not have committed the most heinous of murders nor have a record of violence.

The committee considered and rejected suggestions made in Parliament during debates on the latest Criminal Justice Act that courts should have power to impose either a life or a sentence for a fixed period but allowing the Home Secretary to apply to the courts to substitute a life sentence for a fixed term if necessary for the safety of the public.

An alternative was that a court should impose a determinate sentence with a maximum of 20 years, with power for the Court of Appeal, on application by the sentence review authorities, to extend the period imposed.

A third suggestion also rejected by the committee was that a judge would impose a sentence of life imprisonment together with, if he thought fit, a sentence for a fixed number of years at the end of which the prisoner would have to be released.

Case of the model prisoner

In all these proposals the "determinate sentence" imposed was of an artificial nature, says the committee. It poses the case of a prisoner sentenced to 15 years for murder who had served 10 years and been a model prisoner.

The question was whether he must be released even though reports suggest he would be likely to kill again.

"A person who has received a life sentence has no justifiable grounds for complaint if he is released and then recalled to prison since his release is a benefit which is not guaranteed by his sentence.

"A person who is recalled to prison after his determinate sentence has expired, however, might well have a grievance over his recall and his consequent liability to be detained for the rest of his life.

"We feel his grievance would have some justification." It seemed unlikely that the courts and the general public would regard it as a proper function of the judiciary to increase a sentence 10 years after it was originally pronounced.

Dealing with the power of judges to recommend to the Home Secretary a minimum period that a murderer should serve in jail before release on licence, the committee say they do not agree with their Scottish counterparts that use in almost every case would increase the deterrent effect of the penalty for murder.

Their view that judges should not be required to make a recommendation in virtually every case was shared by Lord Widgery, the Lord Chief Justice and all the Queen's Bench Division judges.

If recommendation were made in less serious cases, it might diminish the deterrent effect and undermine public confidence in the administration of justice if it appeared on the face of it that, for example, four years was recommended as the period in jail to be served by a murderer.

"It seems to us that if the power to make recommendations is exercised sparingly and only in the most serious cases, in which it is in the nature of things unlikely that the accused would be released before serving the length of the minimum period recommended, the deterrent effect is greater than if recommendations are made in almost all cases.

"At present recommendations receive great publicity and the impact would, we feel, be diminished if they became so usual that little or no publicity were given to them."

Since the power was introduced in the 1965 Act, life imprisonment for murder had been imposed in England and Wales in 503 cases up till the end of July. Recommendations were made in 42 or about eight per cent. of these cases.

In 13 cases the recommendation was for 15 years and in another 13 for 20 years. Four cases were for 24-year periods and seven for 30 years. The shortest period recommended was one case of 10 years.

In another a judge recommended that a prisoner should be detained for the whole of his natural life, a practice disapproved by the committee.

"Considerations of humanity suggest that it would be wrong to deprive a prisoner of all hope," they say and it meant a prisoner had nothing to gain by good behaviour in prison which could deter him from violent attack on a prison officer.

If minimum periods were to be recommended in all but exceptional cases, a judge might well not have sufficient information available at the time of trial to know what period to recommend.

This might be particularly so in a case where there was evidence or a suspicion of mental instability.

In a substantial number of cases a prisoner might have to be detained for a long time beyond the recommended minimum period on public safety grounds.

This could create difficulties for prison staff, as prisoners would regard the period specified by the judge as an indication of how long they should be detained.

Disparity in recommendations

Considerable disparity might emerge in the length of recommendations and this disparity would not necessarily be corrected satisfactorily even if a recommendation was subject to an appeal.

Before a murderer can be released on licence by the Home Secretary, the Lord Chief Justice and the trial judge, if available, must be consulted. Release must also be recommended by the Parole Board which has three High Court judges as members.

No case in which a minimum period recommendation had been made had yet been considered by the Parole Board and the system should be allowed to operate for a longer period to see how it really worked in practice and whether deficiencies were revealed.

Proposals that the law should be changed so that a minimum period would not just be recommended but be binding on the Home Secretary were rejected by the committee for the same reasons for not giving judges power to impose determinate sentences for murder.

It would not permit the earlier release of a prisoner who had responded well to treatment. A long stipulated period without hope of release might well have harmful effects on the prisoner's response to treatment and cause problems for the prison authorities.

But they were sure great weight would be attached by the Parole Board and the Home Secretary to any minimum period recommended by a trial judge and that it would only be overridden in exceptional circumstances.

Like the Scottish committee they agree that a minimum recommendation should be considered as part of a prisoner's sentence and subject to appeal. But like a fixed sentence the Court of Appeal would have no power to increase the period

Courts should change words

They also agree that to stress the liability to imprisonment for life, courts should change the words in which they pass sentence. A person convicted of murder should be sentenced to "imprisonment and to remain liable to imprisonment for the rest of his life."

Dealing with those under 18 convicted of murder, the committee say that instead of being sentenced to be detained "during Her Majesty's Pleasure," the murderer should be sentenced to detention "in such place and for such period and subject to such conditions as to release as the Secretary of State may direct".

Unlike the Scottish committee, they propose that judge should continue to have no power, to recommend a minimum period of imprisonment in these cases.

It would be particularly difficult for the judge to recommend a period when the youth of the offender had to be taken into consideration and there was an even greater need for flexibility in these cases.

Members of the committee besides Lord Justice Edmund Davies are Lord Justice Lawton, Sir Donald Finnemore, a former High Court judge, Mr Justice James, recently appointed a Lord Justice of Appeal and who presided at the Angry Brigade trial, Mr J. M. G. Griffith-Jones, the Common Serjeant.

Prof. Rupert Cross, Prof. D. R. Seaborne Davies, Mr John Hazan, Q.C, who sits as a recorder, Judge Kenneth Jones, Sir Frank Milton, the Chief Metropolitan Magistrate, Mr David Napley, a solicitor, Mr William Scott, Sir Norman Skelhorn, the Director of Public Prosecutions, Prof. J. C. Smith and Prof. Glanville Williams, Q.C.

(Criminal Law Revision Committee 12th Report. Penalty for Murder. H.M.S.O. 16p.)

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

[redacted]

TO / À: MR. G. KOZ,
ASSISTANT TO SPECIAL ADVISOR
ON CORRECTIONAL POLICY

FROM / DE: EXECUTIVE ASSISTANT TO THE
DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	February 6, 1973

SUBJECT / OBJET

PA Mr 12-2-73

The Deputy Solicitor General would like to have some statistics, in relation to capital punishment on the average time spent in institutions by persons sentenced to life imprisonment in the United States, France, and England.

He is particularly interested in murders, of course, and how the time they actually spend in prison compares with the kind of sentences they tend to receive.

Could you produce this information, if possible, today.

D.G. COBB

Copy on: 83-3

001539

The Financial Times, January 4/73

Committee backs lighter 'mercy killing' sentences

BY PHILIP RAWSTORNE

THE CRIMINAL Law Revision Committee's interim report to the Home Secretary, Mr. Robert Carr, yesterday indicated that judges should be able to impose more lenient sentences in "mercy killing" cases.

The committee, which recommends that the mandatory life sentence should be retained for murder, says that special provisions should be made for deliberate killings for motives of compassion. "We can see the force of the argument that the mandatory imposition of life imprisonment is odious in such cases and, indeed, that no sentence of imprisonment is appropriate."

The committee says it intends to give the issue further consideration, and says that it would like judges to be able to make hospital or probation orders or to grant conditional discharges.

The committee, under Lord Justice Edmund Davies, whose report is now being studied by Mr. Carr, rejects the determinate sentence as an alternative to life.

Flexibility

A life sentence allowed greater flexibility and enabled those concerned with release to take into account the interests of both the public and of the offender himself, says the report.

"It is the only practicable way of safeguarding the public against the compulsory release of a murderer who may still remain a menace to society. It is also a merciful way of enabling offenders in less heinous cases to be released after serving appropriate terms when it is apparent there is little or no public danger.

"It also provides a protection for the public in the power of recall. The mandatory sentence does demonstrate as no other sentence does that a person, by murdering another, surrenders his own life to the extent that he will always be subject to detention, supervision, or liability to recall."

Unanimous

The committee says that in cases where the judge recommends a minimum period of imprisonment, there should be a right of appeal against the recommendation.

It strongly disagrees with the view that a judge should be required to recommend a minimu period in all but exceptional cases. This view was taken by the Scottish Committee on Penalties for Homicide and has since been incorporated in a private member's Bill by Mr. Edward Taylor, Tory MP for Cathcart, which is to be debated in the Commons later this month.

The Davies Committee points out that the Lord Chief Justice and Queen's Bench judges unanimously support its objections to such a change.

The committee says that those who believe that a life sentence means only nine years' imprisonment are under a misapprehension.

Of 212 murderers released since 1962, 185 had served 10 years or less. But the committee says: "Whereas in 1957 there were about 120 murders in prison who had been reprieved, in August 1972 there were 665, many of whom would not have been reprieved, but executed if the law had not been changed. Government policy regarding the release of life sentence prisoners has had to take account of this change."

Of 869 life sentence prisoners —including the 665 murderers— 96 had already served more than nine years.

The committee adds: "Many of these prisoners may be expected to serve a good deal longer, as will many of their fellows who have not so far served so long."

Criminal Law Revision Committee 12th Report Penalty for Murder, Stationery Office 16p.

○ Mr. Taylor commented that he found it astonishing that the Davies Committee should appear to be satisfied with the present law. All the evidence showed that there had been "a hefty rise" in murder and other crimes of violence, and it was becoming increasingly clear that the life sentence in its present form was not an effective deterrent.

"I shall certainly be going ahead with my Bill, which this report goes completely against. Over the recess I have had messages of support and encouragement from MPs in all parties," he added.

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: SOLICITOR GENERAL

FROM / DE: ASSISTANT DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N/RÉFÉRENCE
YOUR FILE - V/RÉFÉRENCE
DATE: February 5th, 1973

SUBJECT / OBJET

When I was in London on Friday, I picked up the attached report which deals with the Penalty for Murder, which has just been issued by the Criminal Law Revision Committee in the U.K. I thought that you would find this report of interest in light of the debate now going on in the House. The report is somewhat scarce, even in the United Kingdom and I was only able to obtain the one copy.

Allan MacLeod
Please note and return

B.C. Hofley

Attach.

File
Classer

001541

Criminal Law Revision Committee

TWELFTH REPORT
Penalty for Murder

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty
January 1973

LONDON
HER MAJESTY'S STATIONERY OFFICE
16p net
Cmnd. 5184

CRIMINAL LAW REVISION COMMITTEE

GENERAL TERMS OF REFERENCE

The Criminal Law Revision Committee was set up on 2nd February 1959 by the then Home Secretary, Lord Butler, "to be a standing committee to examine such aspects of the criminal law of England and Wales as the Home Secretary may from time to time refer to the committee, to consider whether the law requires revision and to make recommendations".

MEMBERS OF THE COMMITTEE

The Right Honourable Lord Justice Edmund DAVIES, *Chairman*
The Right Honourable Lord Justice LAWTON
Sir Donald FINNEMORE
The Honourable Mr. Justice JAMES
The Common Serjeant, Mr. J. M. G. GRIFFITH-JONES, MC
Professor Rupert CROSS
Professor D. R. SEABORNE DAVIES
Mr. J. B. R. HAZAN, QC
Sir Kenneth JONES, CBE
Sir Frank MILTON
Mr. David NAPLEY
Mr. William SCOTT
Sir Norman SKELHORN, KBE, QC
Professor J. C. SMITH, *Co-opted member*
Professor Glanville WILLIAMS, QC

Mr. J. NURSAW, *Secretary*
Miss B. R. PUGH, *Assistant Secretary*

NOTES

Sir Frederic Sellers was a member of the committee when the subject of offences against the person was referred to them and took part in their consideration of it until he retired from the committee in July 1972.

The late Judge Malcolm Morris, QC, was a member of the committee when the subject of offences against the person was referred to them and took part in their consideration of it until his death in October 1972.

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CRIMINAL LAW REVISION COMMITTEE

TWELFTH REPORT

Penalty for Murder

To the Right Honourable ROBERT CARR, MP, *Her Majesty's Principal Secretary of State for the Home Department.*

INTRODUCTION

1. On 4th March 1970 the then Home Secretary, the Right Honourable James Callaghan, asked us:

> "To review the law relating to, and the penalties for, offences against the person, including homicide, in the light of, and subject to, the recent decision of Parliament to make permanent the statutory provision abolishing the death penalty for murder."

We must stress therefore at the outset that any question relating to the restoration of the death penalty for murder is outside our terms of reference.

2. We are concerned only with the criminal law of England and Wales. In September 1970 the Secretary of State for Scotland announced that, in consultation with the Lord Advocate, he had decided to set up a committee, under the chairmanship of Lord Emslie, to enquire into the penalties for homicide in Scotland. As will be seen from the report of that committee which has now been published(1) the terms of reference of the Scottish Committee were considerably narrower than our terms of reference. The two committees kept in touch with each other by exchanging papers and by meetings between the two chairmen from time to time.

3. This report relates solely to the question of the penalty for murder and differs from our previous reports in that the views we express in it are provisional. We did consider at an early stage of our work on this reference whether we should produce an interim report on homicide because of the widespread public concern about the penalty for murder, and because of the expectation that the Scottish Committee might well be in a position to report earlier than we could in view of their much narrower terms of reference. As a result of debates in the House of Commons on the Criminal Justice Bill(2), we again considered whether we should make an interim report. At both stages in considering this question we have felt that it was important that we should present our conclusions on offences against the person as a balanced whole and that conclusions on homicide should be considered in the light of our conclusions about the law relating to other offences against the person. As was said on the report stage of

(1) Cmnd. 5137. The terms of reference were "To review the law relating to the penalties for homicide in the light of the statutory abolition of capital punishment for murder and to report on the considerations that should govern any proposal for a change in that law".

(2) Now the Criminal Justice Act 1972 (c. 71).

136808 B*

the Criminal Justice Bill, all the subjects we are considering on this reference are very much interlocked and to make a change in one area is difficult without affecting other areas.

4. Our preference would still be to make one final report covering the whole field of our review of the law relating to offences against the person. But the report of the Scottish Committee has now been published(1). In view of the public discussion which there will be about the recommendations contained in that report, we feel that we should make our present views known so that the arguments for and against any changes as they appear to both committees can be considered together. The views we express in this report on the penalty for murder are provisional and if, when we have completed our survey of the law relating to offences against the person and have taken into account any observations that may be made on the provisional views now expressed, we reach any different conclusions, we shall not hesitate to say so in our final report.

5. When we were asked to review the law relating to offences against the person we began by consulting a number of persons and bodies concerned with the administration or teaching of the law about the matters within our terms of reference. In addition, the Chairman sought the views of all the Lords of Appeal and judges of the Supreme Court, the judges of the Central Criminal Court and a number of recorders and chairmen of what were then quarter sessions. The views we received were of great help and interest to us. The committee has had the assistance of Professor J. C. Smith, Professor of Law in the University of Nottingham, who was co-opted as a member of the committee for this reference. The report of the Home Office Statistical Division "Murder 1957 to 1968" was also of particular interest and help.

6. We first considered whether there should continue to be a separate offence of murder and, if so, whether the existing definition of murder at common law was satisfactory. It is sufficient for present purposes to say that, although it might be argued that by reason of the abolition of the death penalty for murder there was no longer the same need to draw a distinction in cases of homicide between murder and manslaughter, we are of the opinion that there should be a separate offence of murder. We believe that the stigma which, in the public's mind, attaches to a conviction of murder rightly emphasises the seriousness of the offence and may have a significant deterrent value. We do not propose to discuss in this report our views on what the definition of murder should be; this is a matter which will be dealt with in our final report.

PRESENT PENALTY FOR MURDER

7. Since the abolition of the death penalty for murder, a person so convicted (unless under 18 at the time the offence was committed) must be sentenced to imprisonment for life under section 1 (1) of the Murder (Abolition of Death Penalty) Act 1965 (c. 71). On imposing such a sentence the court may declare the period which it recommends to the

(1) On 29 November, 1972, the Penalties for Murder Bill, introduced by Mr. Edward Taylor, was read the first time. That Bill seeks to implement the recommendations of the Scottish Committee.

Secretary of State as the minimum period which in its view should elapse before the Secretary of State orders the release of that person on licence (section 1 (2) of the 1965 Act). Under section 61 of the Criminal Justice Act 1967 (c. 80) the Secretary of State may, if recommended to do so by the Parole Board, release on licence a person serving a sentence of imprisonment for life but shall not do so except after consultation with the Lord Chief Justice and, if available, the trial judge. The Secretary of State may revoke the licence of any person released under section 61 of the 1967 Act and recall him to prison when recommended to do so by the Parole Board. Where this is expedient in the public interest and it is not practicable to consult the Parole Board, he may do so without consulting the Board although they will consider the case subsequently. A person convicted of murder committed when he was under 18 is sentenced to be detained during Her Majesty's Pleasure and is then liable to be detained in such place and under such conditions as the Secretary of State may direct (section 53 (1) of the Children and Young Persons Act 1933 (c. 12) as substituted by section 1 (5) of the Murder (Abolition of Death Penalty) Act 1965). The procedure for releasing a person on licence under the Criminal Justice Act 1967 described above applies equally to those sentenced to be detained during Her Majesty's Pleasure.

8. The procedure governing the release on licence of life sentence prisoners is as follows. Each case is carefully considered at an early stage and a date is fixed for review, normally after 4 years, though in appropriate cases a review may be held earlier. Reports are called for from the prison, including reports by the Governor, the Assistant Governor, the Medical Officer and the Chaplain, and in some cases where there is an element of mental instability there will also be further psychiatric reports. This review at 4 years is carried out by the Home Office, its main purpose being to decide whether exceptionally the local review committee should be asked to review the case before the prisoner has served 7 years. There is a local review committee for every prison. These were set up under the Local Review Committee Rules 1967(1) made under section 59 (6) of the Criminal Justice Act 1967. The practice has been to seek the views of the local review committee after an offender has served 7 years, whether or not it appears likely that a provisional release date can reasonably be fixed. The reports from the prison and the local review committee's recommendation are then considered in the Home Office and, if it is thought that there is a possibility of a provisional release date being fixed, the views of the Lord Chief Justice and the trial judge, if he is available, are obtained. All cases, whether a release date is proposed or not, are then considered by the Parole Board. The Board either recommend a provisional release date (usually 12 months ahead) or, if release is not recommended, the time of the next review. Supervision by a probation officer is usually a condition of the licence and other conditions may be added (*e.g.* a condition of psychiatric supervision) where appropriate. The conditions may be cancelled when the licensee has shown that he has settled down satisfactorily in the community, but the licence remains in force for life and the licensee may be recalled to prison at any time should his conduct give cause for concern. A person who

(1) S.I. 1967/1462.

has been recalled may make representations to the Parole Board, who may, if they think fit, order his release. In 1970, 160 life sentence cases(1) were considered by the Parole Board and 44 were recommended as suitable for release on licence at a date about a year ahead, subject to good behaviour in the meantime. The Secretary of State accepted the Parole Board's recommendation in 38 cases. Four of these were recall cases(2), two of whom were released immediately after their recall on the consideration of their representations by the Parole Board. In the other two recall cases both had previously served 9 years before release; one had served 1 year and the other 2 years since recall. The remaining 34 cases served the following periods before release:

Number of complete years served	3	4	8	9	10	11	12	14	16
Number of cases	2	1	4	11	7	1	3	4	1

In 1971, 124 life sentence cases were referred to the Parole Board and of these 41 were recommended for release. Since 12 months' notice of release is given it is not yet possible to say how many of these will be released in consequence of these recommendations.

9. The approach of the Parole Board to life sentence cases is described in their report for 1970 in the following way:

> "While the Board will always have in mind the gravity of the offence in dealing with determinate sentences, this is only of major importance where to grant parole would defeat the purpose of the sentence or would endanger the confidence of the public. In determinate sentences consideration by the Board is not a sentencing operation because the sentence has been fixed by the court. With life sentences, however, the sentence is indeterminate and our function assumes a sentencing character, because there is no fixed term. The question is not simply whether the conditions, bearing in mind the nature of the offence, are such as to justify granting parole. The primary question is whether the time served is appropriate to the crime. Before parole was introduced, the sole responsibility for releasing life prisoners rested upon the shoulders of the Secretary of State after consultation with the Lord Chief Justice and the trial judge if available. Now the Act not only provides for this consultation but also provides that the Secretary of State cannot release without a favourable recommendation from the Parole Board.
>
> When the Board considers the possible release of a life prisoner, therefore, it is provided with the views of the Lord Chief Justice and the trial judge. Furthermore, whenever life cases are being considered one of the judicial members of the Board who is a High Court Judge always attends the panel meeting so that the sentencing aspect may be fully represented.

(1) The majority of which were cases of murder. Further details relating to the consideration by the Parole Board of life sentence cases and to the length of detention of murderers released from prison are set out in Tables A and B in the Appendix.

(2) That is cases where a life sentence prisoner had been released on licence, recalled and then considered for release again.

The problems involved in releasing life prisoners are different from most of those in determinate sentence cases because of the length of time which has been spent in prison and away from everyday life. After 10 or more years in prison it is not sufficient for us to be satisfied that the time served is appropriate to the crime and that the risk of repetition is absent and that there is no reason to expect any misbehaviour after release. It is necessary also to prepare the man for release by a process of relaxation of the conditions of imprisonment. Accordingly, when we recommend release we normally do so by proposing a provisional date 12 months in advance, and sometimes by way of the pre-release employment scheme. One result of this is that the Board frequently does not have a clear plan of residence and work for the man's release and these have to be left to the Welfare Department of the prison and the probation service to arrange as the day for release draws nearer." (1)

CRITICISMS OF THE MANDATORY LIFE SENTENCE

10. Since a number of criticisms have been made of the present mandatory life sentence, it seemed that the first matter for us to consider was what, if anything, was wrong with it. It is said that persons sentenced to life imprisonment seldom serve more than 9 years and that, therefore, criminals may believe that they have nothing to lose in committing murder in order to avoid identification for some other serious offence, *e.g.* robbery, for which, if convicted, they may well serve a sentence at least as long as 9 years. If criminals do believe this they do so under a misapprehension and we feel that it is important that they, and the public, should realise that it is wrong to assume that a person sentenced to life imprisonment for murder will be released after serving only 9 years. This misunderstanding has its origin in the practice prevailing before the passing of the Homicide Act 1957 (c.11). Until then murderers were executed unless there were mitigating circumstances justifying clemency. If a reprieved murderer made good progress in prison, and there were reasonable grounds for thinking that he would not resort again to serious violence, it was often thought right to let him out after 9 years, a period which, allowing for remission, is the equivalent of a fixed term sentence of over 12 years—and it was exceptional for longer fixed terms to be imposed for any offence.

11. The 1957 Act changed the situation. It provided that there should be two classes of murder. One was capital murder, where the offence was one of a group considered particularly serious. This continued to attract the death penalty. Other murders ceased to be capital, although those convicted of such murders would, in the absence of mitigating circumstances justifying a reprieve, have been executed before the passing of the Act. Thus there began to grow in our prisons a nucleus of murderers very different from those found there before the 1957 Act. The passing of the Murder (Abolition of Death Penalty) Act in 1965 greatly expanded the process started by the 1957 Act, with the result that there grew up a very

(1) Report of the Parole Board for 1970, paragraphs 47–49.

considerable population of murderers of the more brutal and hardened type. Whereas in 1957 there were about 120 murderers in prison who had been reprieved, in August this year there were 665, many of whom would not have been reprieved but executed if the law had not been changed. Government policy regarding the release of life sentence prisoners has had to take account of this change. When these cases are considered, each one is carefully scrutinized, the nature of the crime and the safety of the public being the two principal considerations taken into account. Of the 869 life-sentence prisoners (including 665 murderers) in August 1972, 96 had already served more than 9 years. Table C in the Appendix shows the periods served by these prisoners up to that date. Many of these prisoners may be expected to serve a good deal longer, as will many of their fellows who have not so far served so long. Successive Home Secretaries have time and again made it clear that, where the circumstances so require, persons sentenced to life imprisonment will have to serve very long terms indeed and in some cases the offender may have to be detained for the rest of his natural life.

12. Another criticism made about the mandatory life sentence is that it obliges a judge to sentence a person to life imprisonment despite the judge's knowledge that, whatever the period the offender may serve in prison, it is unlikely that he will in fact be detained for the rest of his life. This does not seem to us to be a valid criticism (except perhaps in relation to certain tragic cases which we discuss later in paragraph 42 of this report). The essence of the life sentence is the *liability* to be detained for life; however long or short a period a life sentence prisoner has actually served before he is released on licence, he remains subject to recall for the rest of his life. In the case of a determinate sentence of, say, 30 years, the liability is to detention for 30 years, but the prisoner could be released on parole after serving 10 years and, in any event, because of the effect of remission, would be unlikely to serve more than 20 years. The liability to recall would in the ordinary case cease after 20 years and could not in any case continue beyond the end of the 30 years.

13. Some are against the life sentence for murder because they are opposed in principle to a mandatory sentence, since the judge is thereby deprived of the power, which he possesses in all other cases, to distinguish between murders of different gravity by the sentences he imposes and since he cannot take into account any matters of mitigation. Professor Glanville Williams is against the mandatory life sentence for murder for this reason. The other members of the committee do not share his view for the following reasons. Apart from the trial judge's power to make a recommendation under the 1965 Act, the judiciary is involved in the determination of the length of sentence served by those convicted of murder. It is well represented on the Parole Board by three High Court Judges and two circuit judges and, as stated in paragraph 7, the Lord Chief Justice is consulted in every case before a murderer is released on licence, as is the trial judge, if available. Without a recommendation from the Parole Board, the Home Secretary cannot release a person on licence under section 61 of the Criminal Justice Act 1967. Thus it will be seen that, particularly since 1967, the judiciary do play an important part in determining the length of sentence

to be served by those convicted of murder and that this is no longer a matter entirely in the hands of the executive. As is said in the extract from the report of the Parole Board for 1970 quoted above(1), a High Court Judge always attends the panel meeting of the Parole Board when a life sentence case is being considered.

DETERMINATE SENTENCE AS AN ALTERNATIVE TO THE MANDATORY LIFE SENTENCE

14. These criticisms of the mandatory life sentence have led some to suggest that instead of the mandatory life sentence for murder there should be power in the court to impose a determinate sentence within a maximum of life imprisonment as in the case of manslaughter and certain other offences. It is said that a determinate sentence would meet the criticisms of the mandatory life sentence to which we have referred above in paragraph 13 and allow the judge to ensure that, by imposing a long determinate sentence, a murderer was not released from prison after serving only nine years.

15. Another argument that is sometimes advanced is that a determinate sentence would act as a greater deterrent than the indeterminate life sentence on the ground that, the more severe a penalty is, the greater is its deterrent value. In our opinion the argument that a determinate sentence for murder would have greater deterrent effect is put forward on a mistaken assumption as to the length of time actually served by a life sentence prisoner. We have shown above that the belief that a life sentence prisoner is released after a period of nine years is erroneous. A sentence of life imprisonment is potentially more severe than any determinate sentence likely to be imposed. The effect of remission and parole must not be forgotten. In the case of, say, a 30 year sentence, the prisoner knows that if he behaves himself in prison he must be released after 20 years and may be released on licence at any time after 10 years (although release on licence is unlikely if there is the risk of further violence). We are confident that, when it is seen that some life sentence prisoners remain, as we feel sure they will, in prison for extremely long periods and some, it may be, for the rest of their lives, the severity of the life sentence will become apparent to the public. In our view the life sentence can have a greater deterrent effect than a determinate sentence because it is potentially more severe and we hope that everything possible will be done to make clear to the public the reality of the situation.

16. Another fundamental objection to the suggestion that there should be a determinate sentence for murder in place of the present mandatory life sentence is the difficulty that the trial judge would have in sentencing a person convicted of murder to a fixed term of years. Although it is said that the trial judge is in the best position to know what length of sentence the murderer should serve, we do not agree that the judge is in the best position to safeguard the interests of the public by imposing a determinate sentence. It is particularly difficult in cases of murder to predict at the time of sentence whether the murderer in question will have to be detained indefinitely or not, or at what stage of his sentence he will become unlikely to

(1) Paragraph 9.

kill again. A murderer who has to be detained for a long period for the protection of the public may not necessarily have committed the most heinous murder nor have a record of violence.

17. A further most important objection to a determinate sentence for murder is that when a prisoner has completed the whole of his sentence, he *must* be released, even though it may not be safe to do so from the public's point of view. Even if the prisoner has been transferred to a hospital under section 72 of the Mental Health Act 1959 (c. 72) the special restrictions on discharge will end when his sentence expires. If a person serving a determinate sentence is detained in prison until the expiry of his sentence, he is not subject to any compulsory supervision on release. After a person has been convicted of murder, the public has a right to expect to be protected from him in the future; this can be so only if a sentence has been passed which does not of necessity come to an end at a particular time. There is no power of recall once a determinate sentence has expired. In order that a person convicted of murder may be recalled to prison at any time during the rest of his life, it is necessary that he should be liable, under his original sentence for murder, to be imprisoned for the whole of his life.

18. If a determinate sentence were to be given for murder, this would put the offence, as regards sentence, on a par with manslaughter and other offences which at present carry a maximum of life imprisonment. If it is thought (and this is our view, as stated above[1]) that murder should remain a separate offence distinct from manslaughter, we feel that this should be reflected by a wholly different and more serious penalty. At the moment murder is singled out from all other offences by attaching to it a mandatory sentence of life imprisonment; and this serves to emphasise the gravity of the crime.

19. It will be seen from the foregoing paragraphs that we are in substantial agreement with what is said by the Scottish Committee in paragraph 50 of their report where they reject the argument that the trial judge should determine when the offender ought to be released.

OTHER ALTERNATIVES TO THE MANDATORY LIFE SENTENCE

20. It was suggested during a debate on the Criminal Justice Bill in 1972 that the court should, in effect, be given a discretion in cases of murder to impose either a life sentence or a sentence for a fixed number of years and to order in the latter case that the offender should not be released except on licence for life; and that the Secretary of State should be able to apply to the court to substitute a life sentence for the fixed sentence if necessary for the safety of the public. We considered this and two alternatives. The first of these was a suggestion that the court should be able to impose a determinate sentence with a maximum of 20 years, with a power reserved to the Court of Appeal, on application by the review authorities, to extend the sentence originally imposed. The second of these was a proposal under

(1) Paragraph 6.

which a judge would impose a sentence of life imprisonment together with, if he thought fit, a sentence for a fixed number of years on the expiry of which the prisoner would have to be released. The determinate part of the sentence would be subject to remission and parole but the prisoner would be liable to recall for the rest of his life.

21. The difficulty with all these proposals is that the "determinate sentence" proposed is of an artificial nature. The problem is what is to happen when a prisoner sentenced to fifteen years for murder has served ten years and has been a model prisoner earning one-third remission. In these circumstances the question is whether he must be released even though all the reports suggest that he would be likely to kill again. Under one of the proposals the Court of Appeal would consider the case and would extend the sentence but it seems to us unlikely that that Court, and indeed the general public, would regard it as a proper function of the judiciary to increase a sentence ten years after it was originally pronounced. We think that this would be rightly criticised as an attempt to retain life sentences while disguising them as determinate sentences. The solution adopted in another proposal is to couple the determinate sentence with a life sentence so that, although the prisoner has to be released on the expiry of the determinate sentence, he can be recalled to prison at any time thereafter. We do not think it would be generally regarded as acceptable for a person convicted of murder and released after serving a fixed number of years imposed by the trial judge to be recalled to prison by administrative action and detained there perhaps for the rest of his life. There is a significant difference between recalling a person to prison after his release by the Home Secretary on the recommendation of the Parole Board and recalling a person to prison during the currency of his sentence after his automatic release on the expiry of a fixed number of years imposed at his trial. The person who has received a life sentence has no justifiable grounds for complaint if he is released and then recalled to prison since his release is a benefit which is not guaranteed by his sentence. A person who is recalled to prison after his determinate sentence has expired, however, might well have a grievance over his recall and his consequent liability to be detained for the rest of his life and we feel that his grievance would have some justification.

ADVANTAGES OF THE MANDATORY LIFE SENTENCE

22. We believe that there are overwhelming advantages in the mandatory life sentence for murder. The flexibility of the life sentence enables those concerned with the release of the offender to take into account both the interests of the public and of the offender himself. Indeed, it seems to us that the imposition of the life sentence is the only practicable way of safeguarding the public against the compulsory release of one who may still remain a menace to society. It is also a merciful way of enabling offenders in less heinous cases to be released after serving appropriate periods when it is apparent, after a period of observation, that there is little or no element of public danger. The life sentence also enables account to be taken of any deterioration after the prisoner has been released on licence since he is subject to recall to prison for the rest of his life. There has been a particularly striking illustration recently of the use of this power of recall in the case of a

person sentenced to death for murder in 1948, whose sentence was commuted to life imprisonment. After his release on licence from the life sentence, and 23 years after the sentence was imposed, he committed offences, which, although not in themselves particularly serious, showed that the proclivities which had led to the murder still motivated him and the Home Secretary accordingly revoked his licence. We contrast this with what the position would have been if the original sentence had been one of 30 years and the prisoner had earned full remission; then he would have been free of the sentence after 20 years and it would not have been possible to take this action for the protection of the public. The mandatory sentence does demonstrate, as no other sentence does, that a person, by murdering another, surrenders his own life to the extent that he will *always* be subject to detention, supervision or liability to recall.

23. We are thus fully in agreement with the Scottish Committee in concluding that the mandatory life sentence for murder should be retained and for substantially the same reasons as those set out in their report. When we come to deal in our final report with offences involving violence other than murder one of the matters we shall have to consider is whether the courts should not as a matter of policy impose an indeterminate sentence in cases where the offence is of such a kind as to indicate that the offender may pose a continuing threat to society.

RECOMMENDATIONS UNDER SECTION 1 (2) OF THE 1965 ACT

24. As we have mentioned in paragraph 7, under section 1(2) of the Murder (Abolition of Death Penalty) Act 1965 the judge may, in sentencing a person convicted of murder to imprisonment for life, recommend the minimum period which in his view should elapse before the offender is released on licence, although such recommendation is not binding. This provision was introduced as an amendment moved by the then Lord Chief Justice, Lord Parker, during the passage of the 1965 Act and it made statutory the then existing position under which a judge could make his view known informally by writing to the Home Secretary. This provision, in Lord Parker's words "preserves the right, for which I have been striving so long, of the trial judge to mark the gravity of the offence, the revulsion of public feeling, in a proper case by giving what appears to be a very long sentence, which it is hoped will deter others and afford some protection to the police, in particular".(1)

25. In recent years the effective control by the judiciary has increased in two ways. First, since 1965 there has been a statutory requirement to consult the Lord Chief Justice and the trial judge, if available, before a life sentence prisoner is released on licence. More than 250 life sentence cases have been referred to the Lord Chief Justice in the period from April 1968 to October 1972. In only 7 of these cases has the Home Secretary accepted a recommendation to release by the Parole Board against the views of the Lord Chief Justice. Second, since 1967 the judiciary has taken part in the review of life sentence cases by serving on the Parole Board. The power

(1) Official Report, vol. 269, col. 419, 5 August 1965.

given to the court to recommend a minimum period under section 1 (2) of the 1965 Act has been exercised comparatively rarely in practice and, when the court has exercised it, it has done so to emphasise its view that the case calls for a very long period of imprisonment. From the coming into force of the 1965 Act until the end of July 1972, life imprisonment has been imposed for murder in England and Wales in 503 cases (excluding cases in which persons under 18 convicted of murder are sentenced to detention during Her Majesty's Pleasure) and recommendations have been made in 42 (or about 8 per cent) of these cases. The length of the recommended periods has varied from 10 years to life. The number of recommendations made and the length of the periods are as follows:—

1 recommendation for 10 years
2 recommendations for 12 years
13 recommendations for 15 years
1 recommendation for 17 years
13 recommendations for 20 years
4 recommendations for 24 years([1])
7 recommendations for 30 years
1 recommendation for life([2])

26. The Scottish Committee have stated their view that it would be advantageous if section 1 (2) of the 1965 Act were amended so as to *require* the court, in sentencing any person convicted of murder to life imprisonment, to make a recommendation in *every* case except in (undefined) exceptional circumstances([3]). In their view such an amendment would increase the deterrent effect of the penalty for murder and ensure that the judiciary played a greater part in implementing the penalty. In our view a judge should not be required to make a recommendation in virtually every case. This is also the unanimous view of the Lord Chief Justice and the Queen's Bench Judges.

27. We agree with the Scottish Committee that the deterrent effect of the penalty for murder is most important. But, as we explain in paragraph 31, we are not convinced that a recommended minimum period in almost every case would have the desired result of sharpening the deterrent effect. They also said that the making of a recommendation in almost every case would enable a judge to say what custodial element was necessary for the purpose of deterrence and prevention, whereas at the present time he plays virtually no part at all in determining the length of time a murderer is detained in prison. This is not the position in England and Wales in view of the fact that, as mentioned above—and in addition to the necessity to consult the Lord Chief Justice and the trial judge, if available, before release—three High Court Judges serve on the Parole Board. This has not been the position in Scotland although the Scottish Committee suggested that a High Court Judge should be appointed as a member of the Scottish Parole Board([4]). In addition to this, there do seem to us to be a number of objections to this suggested amendment of section 1 (2).

([1]) In one of these cases the offender was transferred to Rampton Hospital under section 72 of the Mental Health Act after serving one year in prison.
([2]) See paragraph 30 post.
([3]) Cmnd. 5137, paragraphs 92–95.
([4]) Cmnd. 5137, paragraph 101. Lord Wheatley was appointed a member of the Scottish Parole Board in November 1972.

28. As we have said before in considering the possibility of replacing the indeterminate life sentence by a determinate one, the trial judge may well not have sufficient information available to him at the time of trial to enable him to know what minimum period to recommend. If the trial judge were required to fix a minimum period in every case, he might be put in a position of great difficulty in having to do so in circumstances in which he did not really feel able to determine the appropriate period. This might be so particularly in a case in which there was evidence or suspicion of mental instability.

29. As we have already seen(1), at present recommendations are made in few cases and where they are made they are for substantial periods. Although in some of these cases a prisoner will, no doubt, have to be detained beyond the minimum period recommended, such cases are likely, with the present use of recommendations, to constitute only a small proportion of the total number of those serving life sentences for murder. But if a judge were required to make a recommendation in almost every case, there would inevitably be recommendations of short minimum periods and it might very well be that in a substantial number of cases a prisoner would have to be detained for a very long time beyond the recommended minimum period on public safety grounds. The detention of a prisoner in these circumstances might well create difficulties for the prison staff for the prisoner would regard the period specified by the judge as some indication of how long he should be detained and might become motivated by a sense of injustice if detained substantially longer.

30. In the most serious type of case, the trial judge may be inclined to doubt whether the prisoner can ever safely be released. In our view it would be undesirable in these circumstances for a judge to recommend that the prisoner should be detained for the rest of his natural life. The effect of such a recommendation on the prisoner himself must be borne in mind. Considerations of humanity suggest that it would be wrong to deprive a prisoner of all hope, and there are also practical considerations which point to the same conclusion. He has nothing to gain from good behaviour in prison and there is no factor such as loss of opportunity of eventual release on licence which might deter him from a violent attack on a prison officer. Nor would it be right for a judge to recommend a period of, say, 20 years in a case in which he takes the view that it is unlikely that the prisoner can ever be released. In our view, it is preferable in such a case for the judge, instead of making a recommendation, to explain that in a case of such gravity there is no minimum period which he feels he can reasonably recommend and that consideration of the likely date of release on licence is best left to the authorities concerned. In these cases a *requirement* to make a recommendation would in our view be quite inappropriate.

31. We do not feel that in the less heinous cases the making of a recommendation serves any useful purpose. If the intention in requiring recommendations to be made in almost all cases is thereby to increase the deterrent effect of the penalty for murder, it is difficult to see how this is achieved by a recommendation of a short period. Indeed such a

(1) Paragraph 25.

recommendation may diminish the deterrent effect and undermine public confidence in the administration of justice if it appears on the face of it, to those who do not know all the facts of the case, and who perhaps rely on headlines in the press, that, for example, four years is recommended as the period to be served by a murderer. It seems to us that if the power to make recommendations is exercised sparingly and only in the most serious cases, in which it is in the nature of things unlikely that the accused would be released before serving the length of the minimum period recommended (assuming that the judge feels able to specify a period, which may not be so even in the most serious case), the deterrent effect is greater than if recommendations are made in almost all cases. At present recommendations receive great publicity and the impact would, we feel, be diminished if they became so usual that little or no publicity were given to them. In our view the value of recommendations at the present time depends upon the fact that they are made only exceptionally and not as a matter of routine.

32. Of all offences, the circumstances in cases of murder vary so considerably that if a recommendation had to be made in almost every case there would probably be a considerable disparity in the length of the recommendations made and such a disparity would not necessarily be satisfactorily corrected even if, as we suggest later in this report(1), a recommendation is appealable.

33. In our view the power to make a recommendation does serve a useful purpose, utilised as it is at present in those comparatively few cases in which the court feels it appropriate to recommend a minimum period. We feel, however, that when the severity of the life sentence becomes apparent to the public and they no longer believe that a person convicted of murder seldom serves more than nine years, the justification for recommendations may well disappear. Our provisional view is that, for the time being, section 1 (2) of the 1965 Act should remain in its present form, so that the making of a recommendation is entirely a matter of discretion for the trial judge. If he is of opinion that some useful purpose would be served by taking that course in a particular case, then he can do so.

34. We must point out that we have had in mind in considering all these matters that the 1965 Act has been in force for only seven years. We feel sure that the Parole Board together with the Home Secretary and the Lord Chief Justice will attach great weight to any recommendation; but no case in which a recommendation has been made has yet been considered by the Parole Board. We feel that the system under the 1965 Act, together with the changes made by the Criminal Justice Act 1967, must be allowed to operate for a longer period in order to see how it really works in practice and whether any deficiencies are revealed. Seven years are not long enough for this, and we are not convinced that any serious deficiencies in this system have yet come to light. This is an additional reason why we do not agree with the Scottish Committee's view that the law should now be changed to require recommendations to be

(1) Paragraph 36.

made in virtually every case. Although we have expressed the view that the time may well come when the justification for recommendations will disappear, our provisional view is that at present the existing position with regard to recommendations should remain.

35. We also considered (as did the Scottish Committee[1]) whether the power of a judge to recommend a minimum term under section 1 (2) of the 1965 Act should be amended so that the minimum period is not just recommended but is a *binding* stipulation which must be followed. The arguments in favour of such a proposal are that a stipulated minimum period would have a high deterrent value because the judiciary would be seen to exercise control over periods served by life sentence prisoners in prison and that it would give the public confidence in the most severe sentence available. For the reasons which we have given for opposing the suggestion that a determinate sentence for murder should replace the present indeterminate life sentence, we are against this proposal too. Briefly, a stipulated (as opposed to a recommended) minimum period would not permit the earlier release of a prisoner who had responded well to treatment. Thus a stipulated minimum period would diminish the flexibility of the indeterminate sentence. Secondly, an indeterminate sentence with a long stipulated minimum period before the expiration of which there was no hope of release, might well have a harmful effect on the prisoner's response to treatment and cause considerable problems for the prison authorities. In any event, we feel sure that great weight will be attached by the Parole Board and by the Home Secretary to any minimum period recommended by the trial judge and that it would be over-ridden only in exceptional circumstances; but there is the flexibility with a recommended, as opposed to a stipulated, minimum period which would enable this to be done where necessary. We are not, therefore, in favour of a system of stipulating minimum periods replacing the existing power to recommend minimum periods.

36. There is at present no right of appeal against a recommendation made under section 1 (2) of the Murder (Abolition of Death Penalty) Act 1965. This was decided in *Aitken* [*1966*] *1 W.L.R. 1076; 50 Cr. App. R. 204*, where it was said that any representation should be made to the Home Secretary[2]. The Scottish Committee think it desirable that the appeal provisions which apply in Scotland to determinate sentences (which include powers to increase as well as reduce sentences) should be available in the case of recommendations[3]. It is our view, too, that recommendations should be appealable in England and Wales. Here the Court of Appeal cannot pass a sentence of greater severity than that imposed on the appellant by the court below. We think that recommendations should be treated as part of the sentence and the provisions applying to appeals against sentence in the case of determinate sentences should apply equally to recommendations. This would have the effect that the Court of Appeal would have no power to increase the length of a recommendation; in our view this is right.

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(1) Cmnd. 5137, paragraph 97.

(2) An application for leave to appeal against a recommendation of 30 years was dismissed by the Court of Appeal in *Sewell* (*The Times, 6 December 1972*).

(3) Cmnd. 5137, paragraph 98.

37. Because the sentence for murder is mandatory, there is no plea in mitigation of sentence. In *Todd* [*1966*] *Crim. L.R. 557*, the Court of Criminal Appeal declined to lay down rules of practice as to what a trial judge should do before making a recommendation under section 1 (2) of the 1965 Act, saying that it must be left to the discretion of the judge in every case to make sure that he gave counsel for the prosecution an opportunity of mitigating and that he had before him any information which would be of value. It seems to us that if the trial judge is minded to make a recommendation, it is right that he should so indicate and invite the defence to make any representations they considered desirable as to whether a recommendation should be made at all and, if so, as to its nature.

38. The Scottish Committee also think that the trial judge should state publicly the factors on which he bases his recommendation or his reasons in the exceptional case for making no recommendation(1). But in our view he should have a complete discretion to state or not, as he wishes, the factors he takes into account in making a recommendation.

39. In the Scottish Committee's view it would be advantageous if the court sentenced a person convicted of murder "to imprisonment and to remain liable to imprisonment for the rest of [his] life".(2) We agree that such a form of sentence, which stresses the liability to imprisonment for life, is preferable to the present position under which a person over 18 is sentenced "to life imprisonment".

PENALTY ON THOSE UNDER 18 CONVICTED OF MURDER

40. There remains to be considered the position of a person under 18 convicted of murder. At present, a person so convicted who appears to have been under 18 at the time he committed the offence is sentenced to be detained during Her Majesty's Pleasure and is then liable to be detained in such place and under such conditions as the Secretary of State may direct (section 53 of the Children and Young Persons Act 1933 as substituted by section 1 (5) of the Murder (Abolition of Death Penalty) Act 1965). The provisions of the Criminal Justice Act 1967 relating to release on licence in the case of adults sentenced to life imprisonment apply equally in the case of those sentenced to be detained during Her Majesty's Pleasure. In our view there is something objectionable about the reference to a person being detained "during Her Majesty's Pleasure" and our provisional view is that a person under 18 convicted of murder should instead be sentenced to detention "in such place and for such period and subject to such conditions as to release as the Secretary of State may direct".

41. At present the power of a judge to recommend a minimum period under section 1 (2) of the 1965 Act does not apply in the case of a person under 18 convicted of murder. In the Scottish Committee's view the trial judge should be *required* to make a recommendation in these cases as in the case of adults. We respectfully disagree. For the reasons we have already given we dissent from the view that the judge should be required

(1) Cmnd. 5137, paragraph 94.
(2) Cmnd. 5137, paragraph 96.

to make a recommendation in such cases; indeed we think that recommendations of a minimum period in the case of persons under 18 should never be made. It seems to us that it will be particularly difficult for a judge to decide on the appropriate period where the youth of the offender is a factor to be taken into consideration and that there is an even greater need in such cases for the flexibility achieved by the imposition of an indeterminate sentence and this would be diminished by any recommendation as to a minimum period. Our provisional view is that the existing law under which a judge cannot recommend a minimum period in such cases should be retained. We are also opposed to the Scottish Committee's proposal that, in sentencing a person under 18 convicted of murder, the court should state publicly that he remains liable to detention for the rest of his life. It seems to us preferable in such cases that the full import of the sentence should be made known to the offender privately rather than in court.

RELAXATION OF MANDATORY LIFE SENTENCE

42. We mention earlier in this report(1) that there are certain tragic cases of murder to which special considerations apply. Examples we have in mind are those in which a killing was done deliberately from motives of compassion but there was insufficient evidence under the present law to justify a verdict of manslaughter on the ground of diminished responsibility—for example, where a mother killed her deformed child or a husband terminated the agonies of his dying wife. We can see the force of the argument that the mandatory imposition of life imprisonment is odious in such cases and indeed that no sentence of imprisonment is appropriate. We should like it to be possible for a judge to be able to make a hospital order under section 60 of the Mental Health Act 1959 or a probation order with or without conditions under section 4 of the Criminal Justice Act 1948 (c. 58) or for him to order a conditional discharge where he is satisfied that it would be contrary to the interests of justice for the accused to serve any sentence of imprisonment. But to achieve this result involves difficulties which we shall try to resolve, our provisional view being that special provision should be made for these cases. We shall return to this matter in our final report.

SUMMARY OF PROVISIONAL CONCLUSIONS

43. To sum up, our main provisional conclusions on the penalty for murder are:

(1) that the mandatory life sentence for murder should be retained (subject to (4) below) (paragraph 23);

(2) that the power of the court to make a recommendation as to the minimum period under section 1 (2) of the Murder (Abolition of Death Penalty) Act 1965 should be retained and that the law should be changed so that a recommendation becomes appealable (paragraphs 33 and 36);

(1) Paragraph 12.

(3) that a person under 18 convicted of murder should be sentenced to detention in such place and for such period and subject to such conditions as to release as the Secretary of State may direct; and that *no* recommendation as to the minimum term should be made in such cases (paragraphs 40 and 41);

(4) that we should give further consideration to the proposal that, in certain tragic cases of murder, a judge should be able to make a hospital order or a probation order or order a conditional discharge where he is satisfied that it would be contrary to the interests of justice for the accused to serve any sentence of imprisonment (paragraph 42).(1)

Edmund DAVIES, *Chairman*
Frederick LAWTON
Donald FINNEMORE
Arthur Evan JAMES
Mervyn GRIFFITH-JONES
Rupert CROSS
John HAZAN
Kenneth JONES
Frank MILTON
David NAPLEY
William SCOTT
Norman J. SKELHORN
John SMITH
Glanville WILLIAMS

J. NURSAW, *Secretary*
B. R. PUGH, *Assistant Secretary*

15 December 1972

Note: Professor D. R. Seaborne Davies has not thought it right to sign this report because he was obliged by other duties to be absent from most of the meetings when the committee considered the subjects dealt with in it.

(1) As indicated in paragraph 13, Professor Williams does not concur in provisional conclusions (1) and (2).

APPENDIX

TABLE A

RELEASE ON LICENCE OF LIFE SENTENCE PRISONERS

Life sentence cases considered by the Parole Board, May 1968–December 1971

Cases referred to Parole Board		451
Cases recommended for release		145
Cases not recommended for release		243
Recalls: licence based on Parole Board's recommendation		4
licensed before Parole Board became operative		22
released immediately on consideration of prisoner's representations		2
Cases referred for variation and cancellation of conditions, review of release date, etc.		35

Life sentence cases considered by the Parole Board 1971

Cases referred to the Parole Board		124
Cases recommended for release:		
Murder	34	
Manslaughter	7	
Other	Nil	
		41
Recommendations accepted by the Secretary of State		37
Cases not recommended for release		68
Recalls: licence based on Parole Board's recommendation		1
licensed before Parole Board became operative		4
released immediately on consideration of prisoner's representations		2
Cases referred for variation and cancellation of conditions, review of release date, etc.		8

TABLE B

LENGTH OF DETENTION OF MURDERERS RELEASED FROM PRISON OVER THE PAST 10 YEARS

Year of release	Served 1 year	Served 2 years	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Served 20 years or more	Total
1962	—	—	—	—	—	—	—	3	2	—	—	—	—	1	—	—	—	—	—	—	6
1963	—	—	—	1	—	—	—	3	3	1	—	—	—	—	—	—	—	—	—	—	8
1964	—	—	1	—	—	1	1	5	7	1	—	—	—	—	1	—	—	—	—	—	17
1965	—	—	—	—	1	—	3	11	4	1	—	—	—	—	—	—	—	—	—	2 (1 at 20 years 1 at 21 years)	22
1966	—	—	—	—	—	—	1	4	14	2	1	—	—	—	—	—	—	—	—	—	22
1967	1	—	—	—	1	—	5	4	7	2	—	—	—	—	—	—	—	—	—	—	20
1968	1*	—	—	—	—	—	2	5	12	—	3	2	—	—	—	—	—	—	—	—	25
1969	—	—	—	—	—	—	1	7	13	4	1	1	—	—	—	—	—	—	—	—	27
1970	—	—	—	1	—	—	1	3	12	6	—	1	—	—	—	—	—	—	—	—	24
1971	—	—	—	—	—	—	1	2	4	5	1	2	—	4	—	1	—	—	—	1 (at 24 years)	21
1972 ... ... (to 18 August 1972)	—	—	—	1	—	1	1	4	7	1	2	1	1	—	1	—	—	—	—	—	20
Total ...	2	—	1	3	2	2	16	51	85	23	8	7	1	5	2	1	—	—	—	3	212

* Served 6 months—mercy killing.

TABLE C

BREAKDOWN OF 96 LIFE SENTENCE PRISONERS WHO, ON 18 AUGUST, 1972, HAD SERVED NINE YEARS OR MORE

Years served	Murder	Manslaughter	Other offences	Total
20–21 ...	1	—	—	1
19–20 ...	—	—	—	—
18–19 ...	—	—	—	—
17–18 ...	—	—	—	—
16–17 ...	—	—	1	1
15–16 ...	4	—	1	5
14–15 ...	4	1	—	5
13–14 ...	7	1	2	10
12–13 ...	3	3	—	6
11–12 ...	11	3	—	14
10–11 ...	10	5	2	17
9–10 ...	32*	5	—	37
	72	18	6	96

* Includes 1 woman.

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Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

[redacted]

TO / À: MR. A. J. MacLEOD, Q.C.

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	February 5, 1973

SUBJECT / OBJET: Capital Punishment - Solicitor General's Meeting with Canadian Association of Chiefs of Police

In preparation for the meeting that the Solicitor General will have on Wednesday, February 7th with the above Association, it would be appreciated if you could prepare a summary of the Brief of the Association on Capital Punishment, a copy of which is attached.

R. Tassé
by ROP

Roger Tassé

Attach.

RT/ROP

001565

Forwarded to S/G on
Feb 5/73

Copy handed to
Mr Cameron on Feb 23/73

THE DEPUTY SOLICITOR GENERAL

SPECIAL ADVISER,
CORRECTIONAL POLICY

February 2, 1973

Notice of Motion No. 40 - Mr. Towers

This Notice of Motion is as follows:

> " That, in the opinion of this House, the government should introduce a measure to provide that, on polling day at the next general election, there shall be held a national plebiscite on the question of the abolition of capital punishment and on the related and consequent questions arising therefrom."

I can only suggest that the issue of capital punishment is no more important than many others that might be suggested as the basis for a national referendum.

It has never been the practice in Canada to submit issues - sociological or other - to the public by way of referendum. I suppose that capital punishment has been a sociological issue ever since Cain slew Abel. Capital punishment does not seem to me to be the issue upon which, by way of precedent, the Canadian Government should seek to determine the views of the public.

It is said that Members of Parliament are supposed to reflect the opinions of the majority of their constituents. It is said, also, that Members of Parliament should be leaders in thinking of the national good and not necessarily reflect the views - prejudiced as those views from time to time may be - of their constituents.

Finally, I would say that the highly emotional issue of capital punishment should not be bound up with the question of the election of a national government. If it can be said that a free vote in the House is desirable so that a government would not stand or fall on the issue of capital punishment, it would seem to be equally true that a government should not be elected - or fail to be re-elected - on the issue of capital punishment.

Copy re: 116-5

A. J. MacLeod.

DEPARTMENT OF THE SOLICITOR GENERAL
MINISTÈRE DU SOLLICITEUR GÉNÉRAL

MEMORANDUM

22-2-73

Mr. Tassé:

As requested.

for B.C. Hofley

Mr [illegible]:
Please find out
who is handling this
and send him Commissioner's
memo —

Feb 22/73.

001567

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

DM SM
SOL GEN
FEB 20 3 16 PM

SECURITY - CLASSIFICATION - DE SÉCURITÉ: 71

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: February 19, 1973

TO / À: Deputy Solicitor General.

FROM / DE: Departmental Assistant.

SUBJECT / OBJET: Notice of Motion No. 40 - Mr. Towers (on capital punishmt)

Reference this office memorandum of January 31, 1973. May hastening action be taken on the brief requested.

Note:
(1) There is nothing on File 116-5 w/r to Motion 40

(2) There is no trace in Mr. MOSLEY's working-papers of any action on this ~~matter~~ GCKa 20/2/73

J.R. Cameron

(2) Mr Tassé
As requested

001568

CANADA

DEPARTMENT OF JUSTICE
MINISTÈRE DE LA JUSTICE

CONFIDENTIAL

BY HAND

Ottawa, Ontario.
February 2, 1973

Received - Feb 2/73
RoP

Mr. Roger Tassé,
Deputy Solicitor General,
Department of Solicitor General,
Room 323,
Sir Wilfred Laurier Building,
340 Laurier Avenue West,
Ottawa, Ont.

Dear Mr. Tassé,

Re: 230,000-50
Capital Punishment Legislation

Attached for your information are the following:

(1) Copy of my memorandum dated January 29, 1973 to the Minister of Justice outlining the alternatives that have been discussed to the Bill now before the House. Since this memorandum was intended for internal use only, I would appreciate it if you would treat it as confidential.

(2) Five copies each of draft Bills incorporating the proposals contained in the second, third and sixth alternatives summarized in my memorandum.

Yours truly,

D.S. Thorson
Associate Deputy Minister

We discussed this.

001569

UNIVERSITÉ D'OTTAWA UNIVERSITY OF OTTAWA
OTTAWA ONTARIO
CANADA K1N 6N5

CRIMINOLOGIE CRIMINOLOGY

January 31, 1973.

Capital punishment

Monsieur Roger Tassé,
Solliciteur Général Adjoint,
Pièce 323,
Edifice Sir Wilfrid Laurier,
340 ouest, avenue Laurier,
OTTAWA, Ontario,
K1A 0P8.

Dear Mr. Tassé:

Following our telephone conversation I enclose a copy of my letter of March 24th, 1966, to Mr. Reid Scott, M.P., with regard to capital punishment. The proposal contained in my letter was subject to discussions and negotiations in the House of Commons at that time and apparently was accepted in principle by an informal working group representing all political parties, including Social Credit. The proposal was lost, however, when a motion was made in favour of total abolition; this motion was subsequently defeated.

The enclosed letter still represents my point of view as a researcher, but my proposal cannot be implemented at the present time because of the change in public opinion. In principle capital punishment may be favoured, especially within the limits I suggest, but if any murderer were hanged there would be a public outcry.

As you know, I have been a member and executive officer of a number of national and international bodies concerned with criminal law and criminology, and a consultant to the United Nations on research and policy in the social defence field. My contacts with these organizations and with lawyers and criminologists in Canada and abroad lead me to say that any government allowing the resumption of executions would be condemned by world opinion; along with the government the whole country would be condemned.

...2

I have read that another proposal has been made, to take the issue of capital punishment to the Supreme Court. Neither as a lawyer nor as a political scientist can I believe this proper in a parliamentary democracy. In Canada the ultimate power of decision on what laws we are to have rests with Parliament; in the United States to a large extent this power has been transferred to politically appointed judges. Whether the United States' form of government is democratic or not is not at issue; but it is not the parliamentary system we have here.

I hope these remarks will be helpful to you and to the Honourable Warren Allmand.

Yours sincerely,

T. Grygier,
Director.

encl.

c.c. Mr. R. du Plessis
Mr. F. E. Gibson
Mr. G. Johnson

DST/tk.

DEPARTMENT OF JUSTICE

CONFIDENTIAL
BY HAND

29th January, 1973.

MEMORANDUM FOR: THE MINISTER OF JUSTICE

FROM: D. S. THORSON

230000-50

Re: Capital Punishment.

You asked me this morning for a note summarizing briefly the alternatives that we have canvassed to the Bill now before the House dealing with capital punishment.

All the alternatives have one element in common, namely the abolition of capital punishment in all cases of murder, regardless of the nature of the act, the identity of the victim, etc.

1. The first alternative would then go on to incorporate into the *Criminal Code* a statutory prohibition against release by the Parole Board within fifteen years after conviction. This would be coupled with a requirement that any decision of the Parole Board to release on parole a person who has been convicted of murder must be by a two-thirds vote of the members of the Board.

A variation of this alternative would be to substitute twenty years (or even twenty-five years) as the minimum release time.

2. The second alternative is the same as #1 above, but with an added provision for a five year "trial period" similar to that provided for in the Bill now before the House. (The logic of such a trial period is, I should think, open to question, but should at least be discussed.)

3. The third alternative is to provide a minimum twenty-year period within which no parole may be granted to persons who have been convicted of "specially serious" kinds of murder. The ten-year rule which now prevails, by virtue of the present regulations under the *Parole Act*,

. 2

would apply to all other kinds of murder. /The words "specially serious" would, of course, not appear in the law, and are intended only as a label for our own convenience./

This alternative would employ, as the measure of a "specially serious" murder, the existing definition of capital murder, i.e., where it is "planned and deliberate", where the accused himself did the shooting or strangling, where the victim was a peace officer acting in the course of his duties, etc.

Note that this alternative would require a finding to be made by the jury, at the time of the accused's conviction, that the murder was of the "specially serious" kind. The finding would have to be appealable, and the accused would have to be given notice, before the commencement of the trial, that the prosecutor intended to lead evidence to prove that the murder fell within this class.

4. The fourth alternative is the same as #3 above, but would substitute a different measure of the kind of murder to which the twenty-year rule would apply. The Deputy Solicitor General has suggested that it should include murders in the course of aircraft hijackings, the killing of persons held as hostages, the killing of kidnapped persons, "etcetera". /The "etcetera" is, I think, the real problem with this suggestion. If we are to follow Mr. Tassé's suggestion, what should the test be, and will not the debate be endless on whatever description of offences we may decide upon? So far, no attempt has yet been made to draft this particular alternative./

5. The fifth alternative is the same as either #3 or #4 above, but again with an added provision for a "trial period" (the logic of which is also open to question as in the case of alternative #2).

6. The sixth alternative (on which drafting is currently underway) is the one that you have suggested, which would require the trial judge (possibly on the basis of a recommendation made by the jury) to fix a time, between ten years and twenty-five years following conviction, before which a convicted person may not be released on parole. This requirement would govern in all cases of murder, whether "specially serious" or otherwise.

. 3

A variation of this particular alternative would be to confer a discretion on the trial judge to fix a time between ten years and twenty-five years, failing the exercise of which the present ten-year rule could be made to apply. Probably a more acceptable variation would be to provide that twenty-five years before eligibility for parole would be the normal rule, except that the trial judge would have a discretion to fix a lesser number of years (but not less than ten) before which parole may not be granted. All such decisions of the judge, including any failure or neglect to exercise his discretion, would probably have to be made appealable by the accused and by the Crown in the same way that the conviction itself is appealable.

As I indicated on the telephone, officials of the Solicitor General's Department have objected strongly to alternative #6 as a denial of the basic philosophy of the *Parole Act* and the parole system, which is concerned with the behaviour and attitude of the offender in the period following his conviction, the likelihood of his eventual successful rehabilitation and return to society, the risk to the public of returning him to society, and other similar considerations. You will, no doubt, wish to assess the merits of this objection in the light of the hoped-for "trade off" of achieving total abolition, in the climate of opinion that now exists.

. . . . . .

One final variation might also be mentioned, which could be made to apply to a number of the alternatives described above. If it appears that strong pressure will be brought to bear to limit or do away with the power of granting executive clemency, the law could provide that "unless the Parliament of Canada otherwise directs" no person . . . . shall be released on parole until . . . . ". With this kind of formulation in the law it would become very difficult, politically, to exercise executive clemency but the way would still be open to provide for early release in exceptional cases, with the approval of Parliament. This variation is of course recommended only as a possible "fall-back" position.

D. S. T.

1149-306

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: FILE

FROM / DE: ASSISTANT DEPUTY SOLICITOR GENERAL

File Closed WB

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	Jan. 26th, 1973

SUBJECT / OBJET: Capital Punishment

I spoke to Mr. Clifford concerning the return on Capital Punishment. Mr. Clifford informed me that the information he discussed with Mr. Tassé was related to returns from national governments on this question. These had all been published and would be sent to us.

The questionnaire on capital punishment was a separate matter and had only been sent to National Correspondents and not to governments, which explained why we received one since I am the National Correspondent. Mr. Clifford said that the returns to this questionnaire were very slow, but he would try to send whatever is available.

B.C. Hofley.

001576

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: ASSISTANT DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ASSISTANT

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

SUBJECT / OBJET: THE DEATH PENALTY IN THE UNITED STATES

The United States Supreme Court, in the case of Furman v. Georgia, 33 L.Ed. 2d 346, decided by majority of five to four that capital punishment was unconstitutional as being cruel and unusual punishment, contrary to the eighth amendment, as applied to the States by the fourteenth amendment. Three judges of the majority, Mister Justices Douglas, Brennan and Marshall, held that the death penalty was unconstitutional regardless of the form it took. The other two judges of the majority, Mister Justices Stewart and White held that the legislative death penalty giving discretion to judge and jury was unconstitutional because it failed to produce even-handed justice. According to them the selection process involved no rational pattern.

The Chief Justice Burger, in dissent, with Mr. Justices Blackmun, Powell and Rehnquist agreeing, pointed out that the judgement of Mr. Justices Stewart and White stopped short of condemning the death penalty outright. Providing legislative standards for judges and juries to follow would not be sufficient to meet the objections of these two judges, because, firstly, suitable guidelines would be difficult to establish and, secondly, even if such guidelines were established patterns might not change. Sentencing patterns would change if the death sentence was made mandatory in certain cases. But, if that is all the legislators could constitutionally do, Mr. Justice Burger and the other three dissenting judges would have preferred the court opt for total abolition. Even though the four dissenting judges held that a legislated death penalty with judge and jury option was not unconstitutional, they might be persuaded that a mandatory death penalty was unconstitutional as being arbitrary and doctrinaire.

File Classer JS

.... 2/

001577

American Attorney General Richard G. Kleindienst, in a press conference of January 4, 1973, stated that he expected the Nixon administration to ask Congress to legislate a mandatory death penalty for specific crimes, such as kidnapping, assassination, bombing of public buildings, hijacking of airplanes and killing of a prison guard. Mr. Kleindienst suggested that such a mandatory sentencing law would be a constitutional capital punishment statute. However, in light of the obiter dictum of the Chief Justice against mandatory and capital punishment laws, it is possible that the only two judges of the Supreme Court that would find such a law constitutional would be Mr. Justices Stewart and White.

David Matas

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

SECURITY - CLASSIFICATION - DE SÉCURITÉ	
OUR FILE – N/RÉFÉRENCE	
YOUR FILE – V/RÉFÉRENCE	
DATE	January 23, 1973

TO / À: **DEPUTY SOLICITOR GENERAL**

FROM / DE: **DEPARTMENTAL COUNSEL**

SUBJECT / OBJET: **Capital Punishment - Public Reaction**

It is often stated in the newspapers and elsewhere that in considering whether death sentences should be carried out, or whether they should be provided for by law, the government does not properly consider the anguish of the victims and their families. In this connection, I thought it might be useful for the Solicitor General to be made aware of a letter received by this department when the Borg case was under consideration in 1969.

I enclose a typed copy of a handwritten letter which came to us quite unsolicited from the daughter of a policeman who was murdered, and whose murderer was executed. I think it speaks for itself.

I am supplying this memorandum and its attachment in two copies so that you may forward one to the Minister if you see fit.

J.H. Hollies,
Departmental Counsel

Encl.

JHH/mab

001579

s.19(1)

COPY

[redacted]

June 6, 1969

Dear Sir:

When I heard that you and your colleagues are the only people who can save [redacted]'s life, I knew I must write to you to ask you to spare his life, not because he is human and only capable of knowing human feelings, but to save the family of [redacted] from the horrible memories and the pain to which I have been exposed.

[redacted] - one of the last two men hung in Canada - killed my father, a policeman, the day before my eighth birthday. The memories I have of the events that took place after dad was killed still haunt me. I wake up nights from the nightmares, and I wouldn't want anyone else to know or experience them.

Please spare the [redacted] family the grief of remembering how Mr. [redacted] died by releasing Borg from the death sentence. My father's life was not brought back when Ronald Tuprin died, Corporal [redacted]s life will not be brought back either.

Please don't kill [redacted]

Sincerely yours

[redacted]

Mr. Dofley

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: ASSISTANT DEPUTY SOLICITOR GENERAL

DM SM
SOL GEN
JAN 25 1 25 PM '73
DOSSIER

FROM / DE: SPECIAL ASSISTANT

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

SUBJECT / OBJET: THE DEATH PENALTY IN THE UNITED STATES

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.... 2/

001581

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David Matas

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: January 23, 1973

SUBJECT / OBJET: Capital Punishment - Public Reaction

File Glasser

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I am supplying this memorandum and its attachment in two copies so that you may forward one to the Minister if you see fit.

J.H. Hollies,
Departmental Counsel

Encl.

JHH/mab

001583

COPY

s.19(1)

[redacted]

June 6, 1969

Dear Sir:

When I heard that you and your colleagues are the only people who can save [redacted]'s life, I knew I must write to you to ask you to spare his life, not because he is human and only capable of knowing human feelings, but to save the family of [redacted] from the horrible memories and the pain to which I have been exposed.

[redacted] - one of the last two men hung in Canada - killed my father, a policeman, the day before my eighth birthday. The memories I have of the events that took place after dad was killed still haunt me. I wake up nights from the nightmares, and I wouldn't want anyone else to know or experience them.

Please spare the [redacted] family the grief of remembering how Mr. [redacted] died by releasing Borg from the death sentence. My father's life was not brought back when Ronald Tuprin died, Corporal Biggar's life will not be brought back either.

Please don't kill [redacted]

Sincerely yours

[redacted]

Copy re: 113-11-2

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: January 23, 1973

SUBJECT / OBJET: Capital Punishment - Public Reaction

It is often stated in the newspapers and elsewhere that in considering whether death sentences should be carried out, or whether they should be provided for by law, the government does not properly consider the anguish of the victims and their families. In this connection, I thought it might be useful for the Solicitor General to be made aware of a letter received by this department when the Borg case was under consideration in 1969.

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J.H. Hollies,
Departmental Counsel

Encl.

JHH/mab

001585

s.19(1)

COPY

[redacted]

June 6, 1969

Dear Sir:

When I heard that you and your colleagues are the only people who can save [redacted]'s life, I knew I must write to you to ask you to spare his life, not because he is human and only capable of knowing human feelings, but to save the family of [redacted] from the horrible memories and the pain to which I have been exposed.

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Please don't kill [redacted]

Sincerely yours

[redacted]

s.19(1)

CONFIDENTIAL

BY HAND

141-206
Vol 7

Ottawa, Ontario,
K1A 0P8

January 22, 1973

Dear Mr. [redacted]

Thank you for your letter of January 19 enclosing a discussion draft of a Bill abolishing all capital punishment for murder. I hope to be in a position to let you have our comments on the draft within the next day or so.

In the meantime, I would like to emphasize that the Solicitor General is of the view that any changes of the type incorporated in the discussion draft that accompanied your letter of January 19, should be brought forward by way of amendments to Bill C-2 which has already been tabled in the House of Commons. Consequently, I would like to request that a set of the necessary amendments to Bill C-2 to effect these changes be drafted.

I have also discussed with you and Mr. duPlessis the possibility of a different set of rules regarding the minimum period of time that a murderer should serve in penitentiary before becoming eligible for a release on parole. For example, the 10-year rule could continue to apply in the case of all murderers except that a 15-year rule would apply in the case of murders connected with hijacking, persons kept as hostages, attacks on government property resulting in death of individuals, etc. It would be important that the various technical problems involved in drafting amendments incorporating an approach of this type be looked into, so that drafting could proceed as quickly as possible, should it be decided that amendments of this type should be prepared.

Yours sincerely,
ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R. TASSE

Roger Tassé

RT/HL/ROP

Mr. D. S. Thorson,
Associate Deputy Minister of Justice,
Justice Building,
Kent and Wellington Streets,
Ottawa, Ontario

s.23

Received Jan 19/73
ROP

141-206

Vol 7

CANADA

DEPARTMENT OF JUSTICE
MINISTÈRE DE LA JUSTICE

CONFIDENTIAL

BY HAND

Ottawa, Ontario.
K1A OH8
January 19, 1973.

Mr. Roger Tassé,
Deputy Solicitor General,
Department of Solicitor General,
Room 323,
Sir Wilfred Laurier Building,
340 Laurier Avenue West,
Ottawa, Ont.

230,000-50
Re: Capital Punishment Legislation

Dear Mr. Tassé,

Attached is a discussion draft of a Bill abolishing all capital punishment for murder and

[redacted]

Yours truly,

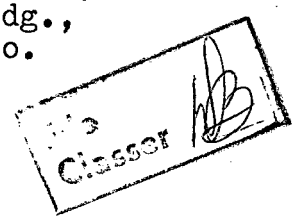
D.S. Thorson,
Associate Deputy Minister

Capital Punishment
File

Canadian Embassy
Ambassade du Canada
Office of Information
1771 N Street, NW
Washington, DC 20036
(202) 785-1400

17 January 1973.

Mr. B.C. Hofley,
Asst. Deputy Solicitor General,
Solicitor General's Office,
Sir Wilfrid Laurier Bldg.,
OTTAWA K1A OP8, Ontario.



copies sent
Mr. Fagan
Mr Matas
25/1/73

With the compliments
of the Office of Information

De la part
du Bureau de l'Information

P. Brown

for *E. R. Johnston*
Second Secretary (Information)

Subject U.S. Eases Hijack Death Penalty Stand

Date January 11, 1973 *Publication* The Washington Post

U.S. Eases Hijack Death Penalty Stand

By Sanford J. Ungar
Washington Post Staff Writer

The Nixon administration formally backed off yesterday from Attorney General Richard G. Kleindienst's statement last week that a mandatory death penalty should be enacted for skyjacking and other "cold-blooded, premeditated" federal crimes.

Testifying before the Senate Aviation Subcommittee on an anti-hijacking bill, Assistant Attorney General Roger C. Cramton said, "Punishment that is too severe or too inflexible may interfere with, rather than enhance, effective law enforcement."

In a statement that had been cleared with top officials at Justice, the White House and the Office of Management and Budget, Cramton told the senators that the administration actually prefers "legislation limiting capital punishment to certain well-defined situations of aircraft piracy and providing standards for its imposition."

He said the "mechanism" most likely to be recommended by the Justice Department is a two-stage trial for defendants charged with capital crimes, one stage for determining guilt and the other for punishment.

In the second stage, the jury would consider "circumstances of aggravation and mitigation" to decide whether the death penalty should be imposed.

Cramton said that if the charge were hijacking, for example, an aggravating circumstance would be loss of life or the finding that "the crime had been committed in an especially heinous, cruel or depraved manner."

The death penalty would not be imposed, however, if the crime were mitigated by the fact that "the defendant was under the age of 18 or that he was under the influence of unusual and extreme mental or emotional disturbance."

Cramton, the departing head of the Justice Department's Office of Legal Counsel, added that a mandatory death penalty might be ineffective because it could create extradition problems with other nations and could lead a hijacker to believe "that he had nothing to lose by continuing a suicidal flight rather than surrendering."

Kleindienst's statements at a news conference last week—in which he explicity endorsed a mandatory death penalty approach—had prompted a last-minute review of Cramton's proposed testimony.

The Justice Department has been weighing its position on capital punishment since last summer, when the Supreme Court ruled that as now imposed, on "a capriciously selected random handful" of people, the death penalty violates the Eighth Amendment ban on "cruel and unusual punishment."

As presented yesterday, Cramton's testimony was in essentially the same form as originally drafted.

Some indications of uncertainty remained, however. For example, the statement originally said that the Justice Department "has serious doubt" about the constitutionality of the death-penalty provisions in the Senate anti-hijack bill, but the word "serious" was crossed out on every copy.

Despite the ongoing controversy over the death penalty in hijack cases, most of the fireworks at yesterday's hearing focused on the Nixon administration's emergency regulations issued last month, requiring airlines to screen all passengers and directing airports to station a local law enforcement officer at the passenger checkpoint for each flight.

Subcommittee members from both parties excoriated retiring Transportation Secretary John A. Volpe for trying, as Sen. Marlow W. Cook (R-Ky.) put it, "to enforce a program without paying for it."

"The American people are looking to their federal government—not to the local sheriff's office—for a program to insure that hijackings don't continue," Cook said.

Representatives of the Air Transport Association of America, the Air Line Pilots Association and the National League of Cities also testified that they preferred to have local airport security in the hands of federal officials, as provided in the Senate bill.

Lee Hines, the pilot of an Eastern Airlines jet hijacked in Houston last October and flown to Cuba, said that local law enforcement officers may "have a badge, a uniform and a gun, but they don't necessarily protect us."

Administration witnesses said, however, that apart from budgetary questions they were concerned about establishment of a new "federal police force" which, under the terms of the Senate bill, would be "an air transportation security-law enforcement force under the direction of the Administrator of the Federal Aviation Administration."

Rep. Bob Eckhart (D-Texas), sponsor of an anti-hijack bill in the House, urged instead that existing forces, such as the FBI, administer the toughened airport security program.

As for the cost, Volpe said the administration favors passing it along to passengers in the form of higher plane fares.

DEPARTMENT OF EXTERNAL AFFAIRS

Subject Kleindienst Position On Death Penalty Surprises His Staff

Date January 6, 1973 *Publication* The Washington Post

Kleindienst Position On Death Penalty Surprises His Staff

By Sanford J. Ungar
Washington Post Staff Writer

When Attorney General Richard G. Kleindienst announced Thursday that he favors instituting a mandatory death penalty for certain "premeditated, cold-blooded" federal crimes, he surprised a lot of people who work for him at the Justice Department.

In fact, even as Kleindienst was outlining the proposal at a news conference, testimony was being prepared for an assistant attorney general to take quite a different position when he testifies before a Senate subcommittee next week.

A draft of the testimony circulated at the department yesterday has Roger C. Cramton, outgoing chief of the Office of Legal Counsel, opposing a requirement that capital punishment be applied whenever someone is convicted of airplane hijacking.

Skyjacking was one of the crimes—along with kidnaping, assassinating a public official, killing a prison guard and bombing a public building—that Kleindienst said were appropriate for the mandatory death penalty.

The Attorney General predicted that legislation along those lines would be sent to Capitol Hill by the Nixon administration this year and that if passed by Congress, it would be constitutional.

But Cramton is now scheduled to tell the Aviation Subcommittee of the Senate Commerce Committee that this could aggravate, rather than relieve, current law enforcement problems.

Cramton declined yesterday to discuss his testimony before Wednesday's hearing, but Justice Department sources involved in the developing administration policy on the death penalty said that the assistant attorney general would probably make these points about the death penalty in skyjacking cases:

• It might create international problems for the United States, since some nations will refuse to extradite a defendant who faces certain execution if convicted.

• Some skyjackers might take more lives, or even blow up an aircraft, if they knew they faced the death penalty and were on the verge of being apprehended.

• In some instances there would be no less serious crimes with which a skyjacker could be charged, so that a jury would be faced with the narrow choice of condemning him to death or setting him free.

John W. Hushen, chief of public information for the Justice Department, insisted that press reports had exaggerated the Attorney General's position.

He said that Kleindienst was only discussing "part of our consideration" of how to react to the Supreme Court's decision last summer that the death penalty, because it is now unevenly applied, is "cruel and unusual punishment" in violation of the Eighth Amendment.

But the consensus in the top echelons of the Justice Department appeared to be that there was still no definite policy on the issue. Some said Kleindienst had been confused about what is currently regarded as the administration's most likely recommendation.

The department's Criminal Division is working on the administration contribution to a congressional revision of the entire federal criminal code.

As now drafted, sources said, the administration version proposes a two-stage trial in any capital case, one stage for guilt and one for punishment. It includes a "mandatory feature" that would require the death penalty in any instance where the jury—in the second stage—finds such "aggravating circumstances" as "the willful disregard of human life."

DEPARTMENT OF EXTERNAL AFFAIRS

Subject.....

Date.....Publication.....

GOV. MARVIN MANDEL
... sees obstacle

Mandel Eyes Mandatory Death Law

By Richard M. Cohen
Washington Post Staff Writer

ANNAPOLIS, Jan. 4—Gov. Marvin Mandel, long an advocate of capital punishment, today said he is considering asking the General Assembly to make the death penalty mandatory for the murder of a policeman or prison guard or the hijacking of an airliner.

Emphasizing that the proposed bill was still under consideration, Mandel said that the only obstacle to its introduction might be the inability of his staff to make the measure's language conform with the Supreme Court's decision outlawing most executions as "cruel and unusual punishment."

The governor revealed his intention to reporters here about an hour after Attorney General Richard G. Kleindienst said in Washington that the Nixon administration will seek a similar federal law from Congress. Mandel's aides said at the time he made his

See MANDEL, A22, Col. 1

remarks, the governor was unaware of Kleindienst's statement.

Asked if he personally favored a restoration of the death penalty in Maryland, the governor quickly said, "Yes, I do, and I'll tell you why if you would like me to." The governor then described an incident that occured last July at the Maryland Penitentiary in Baltimore when he arrived during a riot by inmates.

"One of the guards was being held on the fourth floor right out over the ledge and one of the prisoners (a spokesman) was down on the first floor talking to me, and we were trying to talk him into releasing the prison guard," Mandel said.

"He said to me, 'Look, I'd just as soon push him out. I'm here under life sentence and all they can do is give me another life sentence, so what difference does it make?'

"And I said to him, 'You may be wrong about that.' He said, 'The Supreme Court said I can't get the death penalty.' And I said, 'Yeah, but if it's mandated by the state you could (be executed).' And he turned around to another prisoner and said, 'Is he right?' and the other prisoner said, 'He may be right.' He turned around and stopped talking."

The governor said the hostage guard was then freed.

The difficulty facing Mandel and his legal aides in drafting legislation to conform to the Supreme Court's decision stems from the fact that the high Court handed down nine separate opinions in that case. The key votes in the 5-to-4 decision came from justices who said that the death penalty has been capriciously applied. Therefore, some state attorneys general believed that the court would accept a death penalty that was mandatory for certain crimes, not left up to a judge or jury.

Mandel placed policemen and prison guards into a "special category" and said they needed the protection that a death penalty could provide.

"You have prisoners with a life sentence and the worst you can do to them is another life sentence,' Mandel said. "There isnt much to deter them.

As for hijackers, Mandel said that Maryland should "lead the way" in trying to bring the crime under control. He said he had been considering the bill before this week's attempted skyjacking at Friendship International Airport and could not say if any other attempts had been made in Maryland. The proposal would impose state penalties for hijacking in addition to already-existing federal penalties.

"I think that this is not only severe, but I think it affects a whole nation . . . and its ability to travel, its ability to move, its ability to do things."

Mandel has for some time remarked on the deterrent value of capital punishment. Following the riots at Attica State Prison in New York in September, 1971, Mandel turned to an aide and said, "Now, will they restore the death penalty?"

The General Assembly, for the most part, appears to share the governor's attitude and over the years consistently has rejected attempts to abolish the death penalty in Maryland. It is likely that an attempt to re-establish it in conformance with the Supreme Court's decision would be successful.

A bill similar to the one described by Mandel today has already been prefiled by Del. Richard Rynd (D-Baltimore) for introduction Tuesday when the General Assembly convenes. Mandel, as is his custom, may adopt this bill as an administration measure.

Florida last month became the first state to reinstate capital punishment, passing the bill by lopsided margins in a special session called by Gov. Reubin Askew.

Maryland has not used the gas chamber at the state penitentiary since 1961 when Robert Robertson was executed for murder. On taking office in 1969, Mandel declared that he would permit no executions until the Supreme Court ruled on the constitutionality of the death penalty. At the time it ruled, Maryland had 23 persons on death row.

DEPA IAL AFFAIRS

Subject ... cation ...

THE WASHINGTON POST
Friday, Jan. 5, 1973
A 23

U.S. Seeks Death In Certain Crimes

By Sanford J. Ungar
Washington Post Staff Writer

Attorney General Richard G. Kleindienst said yesterday that the Nixon administration will ask Congress this year to institute a mandatory death penalty for several categories of "cold-blooded, premeditated" federal crimes.

As described by Kleindienst at a news conference, the proposal would require the execution of anyone convicted of kidnaping, assassinating a public official, skyjacking, killing a prison guard or "bombing a public building."

The Attorney General said that "generally speaking" he does not believe that capital punishment "accomplishes an overriding social purpose" or "is a deterrent to crime."

But he added that he feels the death penalty would be effective in preventing crime if it were restricted to the areas he indicated.

Kleindienst suggested that the mandatory approach—in which a jury in effect decides the questions of guilt and punishment at the same time—would meet the objections of a Supreme Court ruling last summer.

In that decision, the high court ruled, 5 to 4, that the death penalty, because it has been unevenly applied by state and federal courts, is an unconstitutional violation of the Eighth Amendment ban on "cruel and unusual punishment."

As a result, every prisoner on death row anywhere in the country must have his sentence commuted.

Several state legislatures have since moved to reinstitute capital punishment, and members of Congress have also interpreted the Supreme Court decision as an invitation for new federal legislation.

However, Kleindienst's proposal drew an immediate negative reaction on Capitol Hill yesterday.

One key Senate aide said that the Attorney General "has been misadvised" on how to meet the test of the Supreme Court's death-penalty opinion, suggesting that other approaches would be more workable and more likely to win acceptance.

He pointed, for example, to a provision in a bill to revise the entire federal criminal code, introduced by Sen. John L. McClellan (D-Ark.) yesterday, which would reinstitute the death penalty but includes standards for its application.

One requirement of the McClellan proposal is a bifurcated trial, in which the jury decides separately on the issues of guilt and punishment.

The McClellan bill, the product of several years of study and hearings, also says that the death penalty may be applied only where a defendant, in the course of a serious criminal act, intentionally took another's life.

The legislative aide also said it would be "madness" for the Nixon administration to believe that the Senate Subcommittee on Criminal Laws and Procedures would approve the mandatory death penalty bill outlined by Kleindienst. Chaired by McClellan, the subcommittee includes two ardent Democratic opponents of capital punishment, Philip A. Hart of Michigan and Edward M. Kennedy of Massachusetts.

Critics of the administration approach pointed yesterday to what they said were two serious flaws in Kleindienst's reasoning:

• The assumption that would-be criminals, such as airplane hijackers, would be deterred rather than emboldened by the threat of the death penalty. Several key FBI officials believe that more lives might be lost if hijackers believe they will die for their crime anyway.

• The presumption that the death penalty will actually be applied. Some legal observers predict that jurors, reluctant to condemn someone to death, might be more likely to acquit those accused of hijacking and convict them instead of lesser included offenses, such as illegal possession of firearms.

Unless the Kleindienst proposal is revised to provide that capital punishment be imposed only if another life is taken during the criminal act, said one critic on Capitol Hill, "even prosecutors will oppose it."

The Attorney General had these comments on other subjects during his wide-ranging news conference in the Great Hall of the Justice Department yesterday:

• The government will drop its riot conspiracy case against five defendants in the Chicago Eight case, rather than seek a new trial as required under a recent opinion of the Seventh U.S. Circuit Court of Appeals reversing their conviction.

He said, however, that the Justice Department will push ahead with trials of the contempt-of-court charges against seven of the defendants and two of their lawyers in the chaotic trial.

Kleindienst defended as "warranted" the Nixon administration's decision to prosecute both the Chicago case, growing out of demonstrations at the 1968 Democratic National Convention, and the Harrisburg conspiracy case involving Father Philip Berrigan and other militant antiwar activists.

• The Justice Department is giving "serious consideration" to asking Congress to revise the statute which now requires that a three-person panel head the embattled Law Enforcement Assistance Administration.

• There has been no decision on whether to prosecute the campaign organizations of President Nixon and Democratic presidential candidate George McGovern for irregularities found by the General Accounting Office.

The Attorney General said that the GAO findings have no priority among the 2,000 complaints of possible election-law violations now in the hands of the Justice Department's Criminal Division.

• The department's Civil Rights Division must make a "very careful examination" of an FBI report on the recent fatal shooting of two students at Southern University in Baton Rouge, La., before deciding whether to convene a grand jury investigation.

Asked whether the situation resembled that at Kent State University in 1970, when four students were killed but no federal grand jury investigation was ever convened, Kleindienst said "we must take a look at each case on its facts."

See PENALTIES, A23, Col. 8

141-206

Government of Canada / Gouvernement du Canada

MEMORANDUM **NOTE DE SERVICE**

TO / À: **DEPUTY SOLICITOR GENERAL**

FROM / DE: **SPECIAL ADVISOR ON CORRECTIONAL POLICY**

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE: File Classer

YOUR FILE - V/RÉFÉRENCE:

DATE: January 16, 1973

SUBJECT / OBJET: **Capital Punishment**

With reference to our discussion of last week, I attach some material concerning questions that the Minister asked on the subject of capital punishment.

A.J. MacLeod,
Special Advisor on
Correctional Policy

Atts.

001594

s.19(1)

Capital Punishment

1. How many Canadian murderers have murdered again?

We know of only one case in which a person convicted of murder in Canada served a term of imprisonment after the death sentence was commuted to life imprisonment, was released on ticket of leave and again committed murder. That person was Albert V. Westgate who was convicted in March, 1929, of the murder of a woman in St. Vital, Manitoba. There was no apparent motive. The woman's body had been found in a ditch, and Westgate had been seen in the vicinity at the time of death.

[redacted] served fourteen years of a life sentence and was released on ticket of leave in 1943. He resided in [redacted] He was convicted of the murder of a young woman who also lived in the same roominghouse. He was executed on July 24, 1944.

It is difficult to find statistics from other jurisdictions in connection with this matter. An Anthology entitled The Death Penalty in America, edited by Hugo Adam Bedau, 1965, refers to eight States of the United States. (California, Connecticut, Maryland, Massichusetts, Michigan, Ohio, New York and Rhode Island) where a total of 1158 murderers were paroled, of whom six committed another murder, and nine others committed a crime of personal violence short of murder. California was the only one with several cases where a murderer was released and killed again.

2. Should the judge have the discretion whether to impose a death sentence or life sentence?

Bedau says (Page 403) that "If literal life imprisonment is required for any convict, out of concern for the public safety, it is certainly wisest that the determination of who shall serve such a sentence should not rest in the hands of a judge or a jury, which determines his guilt shortly after the crime, but should be in the hands of the parole or pardon board which supervises him once he is behind bars. The Model Penal Code of the American Law Institute recommends that all major crimes ("felonies of the first degree") should be punished with a maximum sentence of life and a minimum from one to ten years. This is a complete rejection of the idea that a judge or a jury should have the authority to impose a life sentence on anyone".

On the question of how long a convicted murderer should serve in the case of a life sentence, Bedau has the following to say about the situation in the United States. (Pages 401-2) "At the present time, the opportunity for parole of life term prisoners is far from uniform across the nation. One gets the impression from

some authorities that every state in the nation does permit parole of these prisoners if in the judgment of the state parole board the man can be safely released. But this is incorrect. In California, a commuted death sentence often results in a life sentence "without possibility of parole," and release for anyone under this sentence is possible only if his sentence is again commuted, this time to an ordinary "life" term. In Minnesota, which has no death penalty, a life term prisoner can be released only after twenty-five years of his term has been served (though with good conduct time this can be lowered to seventeen years). But if he has a previous felony conviction, this adds a minimum of another seven years. Prior to 1951, the Minnesota parole law was so stringent that only two lifers, on an average, were paroled each decade. According to a recent survey of parole and release procedures, there are thirteen states (Arizona, Arkansas, Indiana, Iowa, Louisiana, Massachusetts, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Wyoming) in which "some or all life prisoners are ineligible for parole." Thus, the chance for a man to be paroled in these states bears no relation to what he now is and what his prospects are for the future; it is determined solely by his past."

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: DEPUTY SOLICITOR GENERAL

FROM / DE: SPECIAL ADVISOR ON CORRECTIONAL POLICY

SECURITY - CLASSIFICATION - DE SÉCURITÉ:

OUR FILE - N/RÉFÉRENCE:

YOUR FILE - V/RÉFÉRENCE:

DATE: January 16, 1973

SUBJECT / OBJET: Capital Punishment

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A.J. MacLeod,
Special Advisor on
Correctional Policy

Atts.

001597

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C-117

First Session, Twenty-Ninth Parliament,
21 Elizabeth II, 1973

THE HOUSE OF COMMONS OF CANADA

BILL C-117

An Act to provide for a national plebiscite on the abolition of capital punishment

First reading, January 15, 1973

MR. REYNOLDS

C-117

Première Session, Vingt-neuvième Législature,
21 Elizabeth II, 1973

CHAMBRE DES COMMUNES DU CANADA

BILL C-117

Loi prévoyant la tenue d'un plébiscite national sur l'abolition de la peine capitale

Première lecture, le 15 janvier 1973

M. REYNOLDS

25619

1st Session, 29th Parliament, 21 Elizabeth II, 1973

THE HOUSE OF COMMONS OF CANADA

BILL C-117

An Act to provide a national plebiscite on the abolition of Capital Punishment

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 Capital Punishment Plebiscite Act.

Interpretation "election" *"election"* "homicide" *"homicide"*

2. In this act,

'election' means a general election as referred to in the *Canada Elections Act*.

'homicide' means the direct or indirect causing by any means of the death of a human being.

National plebiscite

3. On the date of the first election next held after Royal Assent is given to this act, the Chief Electoral Officer of Canada shall cause to be held a national plebiscite on the abolition of Capital Punishment in Canada.

Form of plebiscite

4. The chief electoral officer in carrying out this plebiscite shall cause the wording of the plebiscite to be as follows:

"The punishment upon conviction for the crime of homicide shall, by amendment to the Criminal Code of Canada, be as follows:

1. "Death with the prerogative of mercy only when so recommended by the presiding trial judge"; or

1re Session, 29e Législature, 21 Elizabeth II, 1973

CHAMBRE DES COMMUNES DU CANADA

BILL C-117

Loi prévoyant la tenue d'un plébiscite national sur l'abolition de la peine capitale

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 du plébiscite sur la peine capitale.*

Interprétation «élection» *«élection»* «homicide» *«homicide»*

2. Dans la présente loi

«élection» désigne une élection générale mentionnée à la *Loi électorale du Canada.*

«homicide» désigne le fait de causer, directement ou indirectement, par quelque moyen, la mort d'un être humain.

Plébiscite national

3. Le jour de la première élection tenue immédiatement après la sanction de la présente loi, le directeur général des élections du Canada fera tenir un plébiscite national sur l'abolition de la peine capitale du Canada.

Forme du plébiscite

4. Pour tenir ce plébiscite, le directeur général des élections fera en sorte que le plébiscite soit présenté en la forme suivante:

«La peine, sur déclaration de culpabilité d'homicide sera, par modification au Code criminel du Canada, la suivante:

1. «Mort, avec prérogative de clémence uniquement sur recommandation du juge présidant au procès»; ou

2. "Life imprisonment with eligibility for parole or other release arising only after 20 years of such sentence being served."

Implementation of plebiscite

5. The Minister of Justice shall at the first session at the House of Commons next following such plebiscite introduce a measure to amend the *Criminal Code* of Canada to provide for enacting into law the result of such plebiscite.

2. «Emprisonnement à perpétuité avec possibilité de libération conditionnelle ou autre uniquement après avoir purgé 20 ans de cette peine.»

Mise en application du plébiscite

5. Le ministre de la Justice, lors de la première session de la Chambre des communes suivant immédiatement ce plébiscite, présentera une mesure modifiant le *Code criminel* du Canada de façon à donner force de loi au résultat de ce plébiscite.

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Government of Canada / Gouvernement du Canada

CC: DEPUTY SOLICITOR GENERAL

MEMORANDUM NOTE DE SERVICE

AGENT [redacted] s.23

TO / À: THE SOLICITOR GENERAL

FROM / DE: J.H. HOLLIES
DEPARTMENTAL COUNSEL

SECURITY CLASSIFICATION / DE SÉCURITÉ: CONFIDENTIAL

OUR FILE – N/RÉFÉRENCE:

YOUR FILE – V/RÉFÉRENCE:

DATE: January 11, 1973

SUBJECT / OBJET: Parole of Persons Serving Life Imprisonment

[redacted]

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

s.23

[redacted]

JHH/MB/LCP

J.H. HOLLIES

CC: DEPUTY SOLICITOR GENERAL

URGENT

THE SOLICITOR GENERAL **CONFIDENTIAL**

Cabinet
punishment
ET
Jan 20/73

J.H. HOLLIES
DEPARTMENTAL COUNSEL

January 11, 1973

Parole of Persons Serving
Life Imprisonment

Mr. Tassé asked me, in preparation for Cabinet meeting tomorrow morning, to set out what the present practice is on the parole of persons serving life imprisonment, and whether it is possible either by regulations or by the Board's rules to prescribe the number of members who will be required to vote on parole and the number of favourable votes that must be cast before parole may be granted. I was further asked, if the foregoing is possible, whether the change in procedure should be made applicable to persons now serving sentences of life imprisonment or should apply only to those persons sentenced after the effective date of the new procedure.

The present practice of the National Parole Board is not "formalized", i.e. it is not to be found in either the regulations or the rules of the Board. The practice of the Board is that each case dealing with parole from a sentence of life imprisonment must receive favourable votes from at least five members of the Board.

Although I had previously expressed the opinion that a suitable amendment might legally be made to the rules of the Board, under section 3(6) of the Parole Act, this view has not been supported by Mr. Christie of the Department of Justice. Mr. Christie is of the opinion that the provisions of section 3(5) of the Parole Act, giving the Chairman a casting vote in the event of a tie, must be read together with section 21(1) of the Interpretation Act, which provides that where an act is required or authorized to be done by more than two persons, a majority of them may do it.

. . . /2

The result, Mr. Christie thinks, is that no rule requiring more than a majority of a quorum of the Board may be made under section 3(6) of the Parole Act, and that legislation would be required to achieve this result. His opinion, however, was given on very short notice and is tentative only, and subject to reconsideration if a formal reference is made to the Department of Justice.

So far as incorporating a similar provision in the Parole Regulations is concerned, it would, in the view of officials of the Department of Justice, and in my own view, be invalid. Under section 9 of the Parole Act the Governor in Council may make regulations on certain matters. None of the matters specifically mentioned would relate to what is proposed. There is a general power to make regulations prescribing "such other matters as (the Governor in Council) deems necessary for carrying out the provisions of this Act". This is not, however, considered as sufficient authority to make such a regulation as is envisaged.

There remains the question of the application of an amendment to the Board's rules (if such is possible) in respect of persons now serving their sentences. In my opinion it would be preferable to have the amendment relate to all cases of this kind irrespective of the date of sentence. If the amendment applied only to those sentenced after its effective date, it might well be very difficult to justify, in either the eyes of the public or among the inmates, a refusal of parole in one instance and the grant of a parole in another, merely on the footing that the dates of conviction differed. A further, relatively minor, factor would be that the Board would be applying two different administrative procedures in its consideration of the parole of these inmates. More importantly, if we are to publicize the amendment to the rules, the public will believe that any person placed on parole who has been serving a sentence of life imprisonment has had the new and more stringent requirements applied to his case. There is not any apparent countervailing advantage to having the amendment to rules applied only to persons sentenced to life imprisonment after their effective date.

JHH/MB/LCF

J.H. HOLLIES

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: Solicitor General

FROM / DE: Zavie Levine

Jim McDonald

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

SUBJECT / OBJET

Liberal Caucus on Capital Punishment - Approximately 33 in Attendance

It is our opinion that the consensus of the Liberal Caucus was for the abolition of capital punishment except in the case of the murder of a policeman or a prison guard. It was felt that these two exceptions were political sops in 1967 and would probably have to be continued in 1973 in order to sell the Bill to the public.

Some M.P.s stated that the Cabinet prerogative to commute should be removed or failing that, limited in such a way that it would be virtually non-existent. Some M.P.s even asked the Government to make an undertaking not to use their prerogative.

Some M.P.s wanted to expand the type of crime that would constitute the death penalty. For example, Ian Watson recommended that any kidnappers who murder their victim be liable to the death penalty. He also suggested that particularly "grisly murderers" be hung, i.e., Manson. This suggestions was not well taken because of the difficulties in defining what crimes and what constitutes a "grisly crime".

Mark MacGuigan made a good point. He wanted a change in the legal definition of insanity. This suggestion was well received. It is our opinion, however, that for reasons of expediency, we could not change the McNaten Rules and present a criminal bill within the next week.

Your suggestion that the Government would not be opposed to amendments by members of the Liberal Caucus on second reading in committee, was received by some members in a dubious manner. It seems that their attitude was that once the Government submitted a bill, it would embarrass the Government if the Liberals brought any amendments to it.

.../2

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

The suggestion that achieved the most unanimity was that the minimum time for life imprisonment be extended from ten to any period up to twenty-five years. Your point that this would retard and frustrate the rehabilitation process was well received. It is our opinion that this explanation was so well received because of the way you presented it. You discussed it as a belief or an opinion that had been given to you by the Rehabilitation authorities and you did not try to flog them with it. It is our opinion that you would have much more difficulty selling the rehabilitation process retardation excuse to the Canadian people as long as they were guaranteed that murderers would be put away for twenty-five years.

All M.P.s confirmed that their constituents were quite hawkish on the subject and they might have great difficulty voting on conscience and having to live with their constituents.

Peter Stollery's point that statistics show that murder is the only major crime that is on the decrease in the U.S., was well received. Other M.P.s asked for similar statistics for Canada.

Mark MacGuigan and other M.P.s suggested that amendments to the Parole Act be brought in as a collateral piece of legislation. Again, this would be impossible due to the time limitations.

There was no unanimity amongst M.P.s concerning the Government's proposal on the capital punishment question. Some M.P.s thought that abolition with its exceptions should be extended for a period shorter then five years. Two years was mentioned and so was three. There was no consensus on any time trial.

ZAVIE LEVINE
Chef de Cabinet

ORIGINAL SIGNÉ PAR
Jim McDonald

CC Roy Tassé CR

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

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

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

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE – N/RÉFÉRENCE: 83-3
YOUR FILE – V/RÉFÉRENCE:
DATE: January 9, 1973

SUBJECT / OBJET: Research Report
Murder in Canada

Attached is "Murder in Canada: A Report on Capital and Non-Capital Murder Statistics 1961-1970" by Barbara Schloss and Norman Giesbrecht which has been received from John Edwards, Director of the Center of Criminology, University of Toronto.

The Deputy Solicitor General would be grateful if you could compare the findings of the Schloss - Giesbrecht study with those of Dr. Fattah in his report "A Study of the Deterrent Effect of Capital Punishment with Special Reference to the Canadian Situation", in time to permit briefing the Minister on significant results of the comparison before the commencement of the Parliamentary debate on this subject.

D.G. Cobb

Att.

Note: Probable date of debate January 19, 1973 or beginning of following week (Jan. 22, 1973)

001609

15
8/1/73

POSSIBLE QUESTIONS

1. Has the Minister seen the article in the January 5th issue of the Globe and Mail indicating that the Attorney General of the United States will ask Congress to make the death penalty mandatory for certain offences and will the Minister comment on whether the government proposes to take the same action.

ANSWER

Mr. Speaker - I have noted with interest the article in question and will be following the debate in the United States as it progresses, as indeed we are following similar debates in other parts of the world. With reference to any possible action to be taken by this government, the House will be asked to decide by a free vote upon the future of the death penalty in the Canadian Law Enforcement System.

2. Can the Solicitor General indicate the nature of the measures to be introduced in the House relating to penal and parole systems, as referred to in the speech from the throne?

ANSWER

As is the custom, any legislation to be introduced will be laid before the Members in bill form.

A supplementary question - When does the Minister expect to be able to introduce the legislation?

ANSWER

The whole matter of penitentiary and parole programs is being examined and the necessary measures will be introduced as soon as circumstances permit.

3. Does the Solicitor General intend to introduce measures relating to the Prison and Reformatories Act during this session?

ANSWER

As I have indicated on previous occasions any legislation to be introduced will be laid before the Members in Bill form. I should add however, before this happens, I will want an opportunity of discussing the entire matter with my provincial counterparts.

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

PARLIAMENTARY COUNSEL
CONSEILLER PARLEMENTAIRE

OTTAWA, K1A 0A6,
January 8th, 1973.

1 copy of each version for Ian Macleod, Holley, Hollies — Kept sent here } Done RDP 9/1/73

8/I/73.

Dear Mr. Tassé,

As requested by Mr. D. S. Thorson, Associate Deputy Minister of Justice, enclosed are five copies each of Versions 1 and 2 of an Act to amend the Criminal Code.

Yours truly,

Gloria Black

for J. P. J. Maingot

Encl.

Roger Tassé, Esq.,
Deputy Solicitor General,
Room 323,
Sir Wilfred Laurier Bldg.,
340 Laurier Ave. West.,
OTTAWA, Ontario.

INQUIRY OF MINISTRY
DEMANDE DE RENSEIGNEMENTS AU GOUVERNEMENT

CANADA

PREPARE 10 COPIES IN ENGLISH AND FRENCH MARKED "TEXT" AND "TRANSLATION"
PREPARER 10 COPIES EN ANGLAIS ET FRANCAIS INSCRIVANT "TEXTE" ET "TRADUCTION"

QUESTION NO. 3

Mr. Mather

Order of Business and Notices No. — *Ordre des Travaux et Avis N°*	Page	Date
1 and 2	i	5 January 1973

Subject — *Sujet:*

Average sentences served - Capital and non capital murder

Reply by the Solicitor General
Réponse par le Solliciteur Général

Signature
Minister or Parliamentary Secretary
Ministre ou Secrétaire Parlementaire

QUESTION

What is the average sentence actually served by persons convicted of murder or of non capital murder and released from prison in Canada from 1961 to 1971?

REPLY — *RÉPONSE*

Text *Texte* [X] Translation *Traduction* [ ]

Capital Murder (Death & Commuted)

	Periods prior and subsequent to amendment to Parole Act Regulations - (4 January 1968)	
	1 Jan 61 to 3 Jan 68	4 Jan 68 to 31 Dec 71
Average time served	12 years	13.5 years[1]

[1] not included - 1 man who served 39 years, 10 months and 17 days.

Non-Capital Murder (Life)

Average time served	6.2 years	7.8 years[2]

[2] average includes three juveniles sentenced to life for capital murder.

CANADA

INQUIRY OF MINISTRY

DEMANDE DE RENSEIGNEMENTS AU GOUVERNEMENT

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QUESTION NO. 3

M. Mather

Order of Business and Notices No. – *Ordre des Travaux et Avis N°*	Page	Date
1 et 2	i	le 5 janvier 1973

Subject – *Sujet:*

Durée moyenne des peines purgées - meurtre qualifié ou non qualifié

Reply by the Solicitor General
Réponse par le Solliciteur Général

Signature
Minister or Parliamentary Secretary
Ministre ou Secrétaire Parlementaire

QUESTION

Quelle est, en moyenne, la durée réelle des peines purgées par les personnes déclarées coupables de meurtre qualifié ou non qualifié et mises en liberté de 1961 à 1971, au Canada?

REPLY – *RÉPONSE*

Text *Texte* ☐ Translation *Traduction* [X]

Meurtre qualifié (peine de mort commuée)

	Périodes antécédentes et subséquemment à la modification aux Directives de la Loi relative aux libérations conditionnelles	
	1 jan 61 au 3 jan 68	4 jan 68 au 31 déc 71
Durée moyenne des peines purgées	12 ans	13.5 ans[1]

[1] ne tient pas compte du cas d'un détenu qui a été incarcéré pendant 39 ans, 10 mois et 17 jours.

Meurtre non qualifié (emprisonnement à vie)

Durée moyenne des peines purgées	6.2 ans	7.8 ans[2]

[2] la moyenne tient compte de trois personnes mineures condamnées à l'emprisonnement à vie pour meurtre qualifié.

141-2006
(Vol. 5 closed)

CONFIDENTIAL

THE DEPUTY SOLICITOR GENERAL

SPECIAL ADVISER,
CORRECTIONAL POLICY

File
Classer

January 5, 1973

Capital Punishment

You raised with me this morning some questions concerning the capital punishment bill. On the points that you mentioned I have the following comments:

(1) The revised discussion draft (Version 2), dated January 4, 1973, is preferable to the other drafts, in my opinion, because

(a) it distinguishes, in non-technical terms, the classes of murder that are, on the one hand, punishable by death, and those that are punishable by imprisonment for life: the expressions "capital" and "non-capital" murder are not expressions that are generally understood by the public; on the other hand, every member of the public can understand the distinction between murder that is punishable by death and one that is punishable by imprisonment for life;

(b) Version #2 repeats and extends the 1967 legislation, save only for the substitution of language mentioned in paragraph (a) above and the necessarily new transitional provisions arising out of the failure of Parliament to deal with the subject prior to December 29, 1972;

(c) quite apart from the desirability of avoiding technical problems presented by other drafts, Version 2 provides a much more acceptable French translation than does the existing law: in other words, the French translation of murder punishable by life imprisonment is much more readily understandable than is "non-capital" murder; and

(d) Parliament is being asked, under this version, merely to re-enact, for an appropriate period, the legislation that was debated at length in 1967, subject only to the distinction that in this version "capital" and "non-capital" are substituted by "murder punishable by death" and "murder punishable by life imprisonment."

(2) The Parole Regulations provide, in section 2, as follows:

> "(3) 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, 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, shall serve the entire term of the sentence of imprisonment unless, upon the recommendation of the Board, the Governor in Council otherwise directs.
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> (4) 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,
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> (a) in the case of a sentence of imprisonment for life, 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, or
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> as the case may be, have been served."

There is no reason, in principle, why a 10-year minimum term of imprisonment is more desirable than, for example, 12 years or, indeed, 8 years. The question is, fundamentally, how much the state wants to punish the murderer by depriving him of his freedom. If one accepts the idea that punishment is the rationale, there is then no reason why the law should not provide that every person serving a death sentence commuted to life should not remain in custody until his dying day. However, in principle, a society that accepts the idea and the ideal of the reformation of the offender should not impose arbitrary limits of punishment, by way of imprisonment, that may in many cases militate against the achievement of the very goals that society is purporting to achieve.

..3

(3) The proposed legislation extends the existing moratorium on capital punishment to five years. This, on the face of it, appears merely to be a repetition of the 5-year period laid down in 1967, and recently expired.

The rationale behind the proposal to extend the legislation for three years was based upon the following considerations, i.e., to enable a comparison of three periods of approximately six years each, during each of which the law of murder was different:

(i) the period 1955 to 1961, when all murder was capital, and the only penalty was death,

(ii) the period 1961 to 1967, when murder was either capital or non-capital, and the penalty for non-capital murder was life imprisonment, and

(iii) the period 1967 to 1973, during which capital murder will have been limited to cases involving the death of a police or prison officer.

Such an extension would be for three years, to December 29, 1975, to allow one full year for comparison and evaluation of the effect of the law during each of the three distinctive periods and a further year for consideration of the entire issue by the government and Parliament.

(4) On the surface it might seem that the government's objective might be achieved by a very simple bill that would merely incorporate by reference the 1967 legislation and extend it for three or five years, as the case might be. However, I think that we are bound to accept the judgment of the Department of Justice in the matter of legislative drafting. Their view is that in drafting the proposed bill in this form, they are merely following their recognized legislative drafting procedures. They make the point that to incorporate by reference means that people will be thumbing through the volume containing the previous legislation and this will be, at the least, an inconvenience and certainly, in some cases, be confusing. Their point is that members of the House and Senate should have immediately before them the legislation that they are asked to enact and that new material therein should be clearly identifiable by underlining or by marginal lines. The draft bill (Version 2) makes it quite clear, at a glance, what the new material is, i.e., merely the distinction between capital and non-capital murder, on the one hand, and murder punishable by death or by life imprisonment, on the other hand.

A. J. MacLeod.

AJM:ecm

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: January 5, 1973

SUBJECT / OBJET: Capital Punishment

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001618

..2

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AJM*EGM

Government of Canada / Gouvernement du Canada

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FROM / DE: SPECIAL ADVISER, CORRECTIONAL POLICY

SUBJECT / OBJET: Capital Punishment

SECURITY-CLASSIFICATION-DE SÉCURITÉ
CONFIDENTIAL
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A. J. MacLeod.

Government of Canada / Gouvernement du Canada

MEMORANDUM — NOTE DE SERVICE

TO / À: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY-CLASSIFICATION-DE SÉCURITÉ: FOR MINISTER'S EYES ONLY
OUR FILE–N/RÉFÉRENCE:
YOUR FILE–V/RÉFÉRENCE:
DATE: January 4, 1973

SUBJECT / OBJET: Capital Punishment

1. I attach a copy of Version No. 1 and Version No. 2 of a draft Bill regarding Capital Punishment as well as explanatory notes accompanying the two versions.

2. These drafts were discussed with Mr. Thorson this morning and I understand that they will come up for discussion before the Legislation Committee next Wednesday.

3. You will recall that you had been asked by Cabinet to consult with Caucus about the position of the Government on this question, and especially the question whether the mandatory term of imprisonment for persons convicted of murder whose sentence has been commuted, should not be extended from 10 to 12 years. I suppose that there would be some merit if you could arrange for this Caucus discussion before the matter is considered by the Cabinet Committee next week if at all possible.

Attach.

Roger Tassé

001624

Government of Canada / Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO / À: SOLICITOR GENERAL

FROM / DE: DEPUTY SOLICITOR GENERAL

SECURITY-CLASSIFICATION-DE SÉCURITÉ FOR MINISTER'S EYES ONLY
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ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
R TASSE

Attach.

Roger Tassé

RT/ROP

001625

LA PEINE DE MORT

Janvier 1973

1. Le droit criminel au cours des dernières années.

1) Avant 1961, tous les meurtres étaient considérés comme des meurtres qualifiés et étaient invariablement punis de mort.

2) Entre 1961 et 1967, le meurtre était soit qualifié soit non qualifié; le meurtre non qualifié était puni d'emprisonnement à perpétuité. Le meurtre était dit "qualifié" "lorsqu'il était prémédité et voulu" par le meurtrier, lorsque le meurtrier agissait "par son propre fait" ou lorsque le meurtrier,"par son propre fait", causait la mort d'un agent de police ou d'un gardien de prison.

3) Du 29 décembre 1967 au 29 décembre 1972, seul le meurtre d'un agent de police ou d'un gardien de prison était considéré comme meurtre qualifié.

4) Depuis le 29 décembre 1972, on a rétabli la loi sur la peine capitale qui était en vigueur immédiatement avant le 29 décembre 1967.

2. Les possibilités qui s'offrent au gouvernement

Le gouvernement peut choisir:

a) d'abolir la peine de mort pour tous les actes criminels

b) de prolonger l'application de la modification de 1967 d'une période qui permettrait de comparer trois périodes d'environ six ans chacune, chacune de ces périodes étant soumise à une loi pénale différente, comme on l'explique plus haut au paragraphe 1.

c) de ne pas demander la remise en vigueur de la loi de 1967 et la loi sera celle qui est actuellement en vigueur, c'est-à-dire la loi en application avant le 29 décembre 1967.

d) de présenter un nouveau projet de loi visant à établir de nouvelles catégories de meurtres qualifiés et de meurtres non qualifiés, ou

e) de présenter un nouveau projet de loi rétablissant la loi qui était en vigueur avant 1961.

3. Études sur la peine de mort

L'étude parlementaire la plus récente sur la peine de mort a été faite entre 1954 et 1956 par un comité spécial, le Comité mixte de la Chambre des communes. La peine de mort, a-t-il conclu, ne devrait pas s'étendre aux crimes pour lesquels elle n'était pas auparavant imposée. A son avis, il fallait continuer de punir de mort la trahison et la piraterie et, même s'il importait que le Parlement étudie périodiquement la question de la peine de mort, on devait quand même la garder comme la peine obligatoire du meurtre, sous réserve cependant de la Prérogative royale de clémence.

En 1971, le Solliciteur général (Jean-Pierre Goyer) confia à M. Ezzat A. Fattah, professeur associé au Département de criminologie de l'Université de Montréal, la tâche de faire une analyse critique des recherches faites et des données réelles qu'on possédait sur la peine de mort en tant que peine judiciaire, ayant particulièrement en vue l'effet intimidant et discriminatoire de la peine de mort.

Le professeur Fattah terminait sa vaste étude en disant que "l'augmentation de l'homicide criminel au Canada ces dernières années ne peut être attribuée à la suspension de la peine capitale". Peu avant Noël, un exemplaire de cette étude a été remis aux députés.

En 1971, le ministère du Solliciteur général a également commandé une étude destinée à mettre à jour un ouvrage publié en 1965 par le ministère de la Justice et intitulé "La peine capitale-Documentation sur son objet et sa valeur". Ce document se fonde entièrement sur des faits et ne prend position, ni d'une façon ni de l'autre, sur la question. Les députés en ont reçu des exemplaires juste avant Noël.

4. Présentes condamnations à mort

Il y a actuellement, au 8 janvier 1973, deux personnes condamnées à mort:

Gary John McNamara en Colombie-Britannique et Réal Chartrand au Québec. La date de leur exécution est respectivement fixée à février et avril 1973. McNamara a été reconnu coupable du meurtre d'un gardien de prison et Chartrand, du meurtre d'un agent de police. Dans ni l'un ni l'autre des cas, la Cour provinciale d'appel n'a entendu l'appel que prescrit l'article 604 du Code criminel.

5. Procédure de révision des condamnations à mort par le gouverneur en conseil.

1) La loi exige que le juge en premier ressort signale au Solliciteur général les sentences de mort qu'il a prononcées.

2) Les détails concernant le condamné, y compris son casier judiciaire, et les détails concernant l'acte criminel, sont obtenus des corps policiers intéressés, du procureur de la Couronne et du shérif de qui relève l'établissement où se trouve incarcéré le condamné.

3) On se procure un exemplaire du compte rendu du procès.

4) Lorsque tous les recours en appel ont été épuisés, le cas est traité comme s'il s'agissait d'un cas où l'exercice de la clémence pourrait entrer en ligne de compte. On recueille donc de plus amples renseignements sur le caractère et la santé mentale de la personne condamnée.

5) On donne à l'avocat de la défense l'occasion de faire, par écrit ou en personne, ou les deux à la fois, des observations au Solliciteur général.

6) Le Solliciteur général soumet alors la question de la commutation de la peine à ses collègues du Cabinet qui ont chacun reçu des copies des documents qui ont été rassemblés.

7) Lorsque la décision du Cabinet a été prise, on émet un décret du conseil qui commue la peine en emprisonnement à perpétuité ou ordonne qu'elle soit exécutée.

8) Tous les cas de peine de mort sont étudiés par le Cabinet suivant les faits relatifs à chacun d'eux, et aucune décision de commuer une peine n'est prise avant que la question n'ait été étudiée à fond par le Cabinet. Même si, au Canada, personne n'a été exécuté depuis 1962, il faut bien faire remarquer qu'il n'existe aucune ligne de conduite établie en ce qui concerne la commutation d'office des peines de mort, et, depuis 1962, chaque cas a été étudié à fond par le Cabinet avant que la décision de commuer la peine ne soit rendue.

6. Dispositions du Règlement sur la libération conditionnelle de détenus relatives à la durée des peines d'emprisonnement

Le Règlement sur la libération conditionnelle de détenus, promulgué par le Gouverneur en conseil, prévoit qu'une personne qui purge une sentence d'emprisonnement provenant d'une sentence de mort commuée devra purger la sentence entière d'emprisonnement à moins que, sur recommandation de la Commission nationale des libérations conditionnelles, le Gouverneur en conseil n'en ordonne autrement.

Le Règlement prévoit cependant que la Commission ne doit pas recommander la libération conditionnelle dans un tel cas avant que ne soient purgés au moins dix ans de la période d'emprisonnement à vie, moins le temps passé sous garde entre le jour de l'arrestation du détenu et le jour où la sentence a été commuée.

7. Statistiques

LA PEINE DE MORT AU CANADA: 1955-1972

Année	Peines de mort	Exécutions	Peines de mort commuées	Autres décisions rendues à la suite d'un nouveau procès ou par la Cour d'appel
1955	17	6	9	2
1956	17	5	5	7
1957	11	3	5	3
1958	21	3	16	2
1959	15	3	11	1
1960	10	2	6	2
1961	17	1	10	6
	108	23	62	23
1962	13	2	8	3
1963	12	-	8	4
1964	5	-	4	1
1965	17	-	12	5
1966	11	-	10	1
1967	10	-	8	2
	68	2	50	16
1968	1	-	1	-
1969	-	-	-	-
1970	3	-	3	-
1971	-	-	-	-
1972	2....			2
	6	(2 d'entre elles font l'objet d'un pourvoi en appel)	4	2 décisions non rendues

Le 8 janvier 1973

CAPITAL PUNISHMENT

January, 1973

1. The Criminal Law in recent years

1) Prior to 1961, all murder was capital, and the only penalty was death;

2) Between 1961 and 1967 murder was either capital or non-capital and the penalty for non-capital murder was life imprisonment: murder was "capital" if it was "planned and deliberate" on the part of the murderer, was done by the murderer's "own act" or was the death of a police or prison officer caused by the murderer's "own act";

3) The period commencing December 29, 1967, until December 29, 1972, during which capital murder was limited to cases involving the death of a police or prison officer;

4) The period since December 29, 1972, when the law on capital punishment reverted to what it was immediately prior to December 29, 1967.

2. Alternatives Available to the Government

The Government has had the following choices:

a) abolish capital punishment for all offences;

b) extend the life of the 1967 amendment by a period that would enable a comparison of three periods of approximately six years each, during each of which the law of murder was different, as set out in paragraph 1 above;

c) do nothing now to revive the 1967 legislation, in which case the law will continue to be, as it is now, what it was on December 29, 1967;

d) submit a new bill attempting to develop further categories of capital and non-capital murder, or

e) submit a new bill restoring the law to what it was prior to 1961.

3. Studies on Capital Punishment

The latest parliamentary study, by Special Committee, of capital punishment occurred between 1954 and 1956. It was conducted by a Joint Committee of the House of Commons. It concluded that capital punishment should not be extended to cover any crimes for which it was not then a penalty; it believed that

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capital punishment should be retained as a punishment for treason and piracy; and that while capital punishment should be subjected to periodic review by Parliament, the death penalty should be retained, as the mandatory punishment for the crime of murder, subject to the exercise of the Royal Prerogative Mercy.

In 1971 the Solicitor General (Jean-Pierre Goyer) authorized the research project by Dr. Ezzat A. Fattah, Associate Professor for the Department of Criminology at the University of Montreal, to "provide a critical analysis of research that has been done and of factual data that exists in connection with the death penalty as a judicial punishment, with special reference to the questions of deterrent effect and discrimination". Professor Fattah's comprehensive study concluded that "the increase in criminal homicide in Canada during recent years cannot be attributed to the suspension of capital punishment". This study was distributed to Members of Parliament shortly before Christmas, 1972.

In 1971 the Department of the Solicitor General also commissioned a study to bring up to date a 1965 publication of the Department of Justice entitled "Capital Punishment - Material relating to its purpose and value". This document is entirely factual and does not adopt a position, one way or another, on the issue. Copies were distributed to Members of Parliament just before Christmas, 1972.

4. Current Cases Involving the Death Sentence

Two persons are now, as of January 8, 1973, under sentence of death:

> Gary John McNamara in British Columbia, and Real Chartrand in the Province of Quebec, their dates for execution being now fixed for February and April, 1973, respectively. McNamara was convicted of the murder of a prison guard; Chartrand was convicted of the murder of a police officer. In neither case has the provincial Court of Appeal yet heard the automatic appeal provided for by section 604 of the Criminal Code.

5. Procedure for Review of Capital Cases by Governor in Council

1) Sentences of death are required by law to be reported by the Trial Judge to the Solicitor General.

2) Particulars concerning the convicted person, including any previous criminal record, and details of the offence are obtained from police forces that have been involved, from the Crown Attorney, and from the Sheriff who controls the institution in which the convicted person is held in custody.

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3) A transcript of the trial proceedings is obtained.

4) When all appeals have been dealt with, the case is dealt with as one where exercise of clemency is an issue. Accordingly, further information concerning the character and mental state of the condemned person is obtained.

5) Defence Counsel is given an opportunity to make representations in writing or personally, or both, to the Solicitor General.

6) The Solicitor General then takes the question of commutation to his colleagues in Cabinet, each of whom is provided with a copy of the material that has been assembled.

7) When a Cabinet decision is reached an Order in Council is issued, either commuting the sentence of one of life imprisonment or directing that it should be carried out.

8) Every capital case is considered by Cabinet on its merits and no decision to commute is taken until the question has been considered exhaustively by Cabinet. Notwithstanding the fact that no execution has taken place in Canada since 1962, it should be emphasized that there is no policy for the routine commutation of death sentences and every case since 1962 has been considered exhaustively by Cabinet before the decision to commute was taken.

6. Parole Regulations concerning Length of Confinement

The Parole Regulations, made by the Governor in Council, provide that a person who is serving a sentence of imprisonment to which a sentence of death has been commuted, shall serve the entire term of the sentence of imprisonment unless, upon the recommendation of the National Parole Board, the Governor in Council otherwise directs.

However, the Regulations require that the Board shall not recommend a parole in such a case until at least ten years of the term of life imprisonment has been served, minus the term spent in custody between the day of arrest and the day when the sentence was commuted.

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7. Statistics

THE DEATH PENALTY IN CANADA: 1955-1972

Year	Sentenced to death	Executed	Death commuted	Otherwise disposed of by new trial or court of appeal
1955	17	6	9	2
1956	17	5	5	7
1957	11	3	5	3
1958	21	3	16	2
1959	15	3	11	1
1960	10	2	6	2
1961	17	1	10	6
	108	23	62	23
1962	13	2	8	3
1963	12	-	8	4
1964	5	-	4	1
1965	17	-	12	5
1966	11	-	10	1
1967	10	-	8	2
	68	2	50	16
1968	1	-	1	-
1969	-	-	-	-
1970	3	-	3	-
1971	-	-	-	-
1972	2			2
	6 (of which 2 are in Court of Appeal)		4	2 not finalized

January 8, 1973