

12/12/61

Second Supplement to Memorandum No. 59(1961)

Subject: Study No. 46 - Arson

The purpose of this supplement is to highlight the questions for decision by the Commission that are more thoroughly presented in Memorandum No. 59(1961).

1. Should the Commission reconsider its action with respect to deleting arson from the felony-murder rule (Pen. Code § 189)? This deals fundamentally with the approach taken by the Commission with respect to an independent examination of the purposes underlying the felony-murder rule, the habitual criminal statute and the no-probation statute. In the study, Professor Packer has attempted only to improve upon the definition of arson, fitting the consequences of arsonous conduct into existing statutory structures. It is probable that no further help can be had from him with respect to research touching upon the policies underlying the felony-murder, habitual criminal and no-probation statutes since he views this as outside the scope of his assignment.

2. Should arson defined in terms of a risk to property be included as a serious offense for which maximum imprisonment might be imposed under the habitual criminal statute (Pen. Code § 644)? The Commission already has determined that arson creating a risk to life should be among the offenses included in the habitual criminal statute for which a life sentence might be imposed.

3. How should arson be dealt with in connection with the probation statute (Pen. Code § 1203)? Upon reflection, Professor Packer has recommended that no change need be made in this statute. (See his letter attached as Exhibit I to Memorandum No. 59(1961).)

4. What specific terms of imprisonment should be applicable to the various degrees of arsonous conduct? This involves a policy determination as to the penalty for simple arson and aggravated arson. The staff believes this decision should be made only after the elements of simple arson and aggravated arson are determined by the Commission.

Respectfully submitted,

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