(NOTE: This week’s meeting is in the Crystal Room of the Benson Hotel)

Printed in this issue for presentation, discussion and action on Friday, October 16, 1964:

REPORTS ON

JAIL - MUNICIPAL COURT - POLICE FACILITIES LEVY
(Municipal Measure No. 53)

CAPITAL PUNISHMENT BILL
(State Measure No. 1)
The Committee: Charles H. Heintz, Lloyd T. Keefe, E. Kimbark MacColl, Donald McKinley, M.D., Peter A. Plumridge, Leigh D. Stephenson and James G. Gruetter, Chairman.

BONDS FOR REBUILDING AUDITORIUM
(Municipal Measure No. 52)
The Committee: Daniel J. Cohn, Gordon L. Henderson, Walton Manning, Charles S. Politz, Theodore E. Reich, Rabbi Emanuel Rose, Lamar Tooze, Jr., and Roland A. Haertl, Chairman.

REVISING FIRE-POLICE DISABILITY-RETIREMENT SYSTEM
(Municipal Measure No. 51)
The Committee: Relph Alberger, Craig Kelley, Hjalmar Rathe, Richard Rubinstein and Gordon Beebe, Chairman.

"To inform its members and the community in public matters and to arouse in them a realization of the obligations of citizenship."
REPORT
ON
JAIL - MUNICIPAL COURT - POLICE
FACILITIES LEVY
(Municipal Measure No. 53)

An Act

Authorizing a continuing special tax levy outside constitutional limitation of $750,000 per year for each of five successive years beginning with the fiscal year 1965-66 for city jail, municipal court and police headquarters and facilities, and authorizing borrowing in anticipation of such levies.

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

The $3,750,000 special levy which would be authorized by Measure No. 53 on the November municipal ballot would be used generally to locate, design, construct or alter appropriate facilities for the city's law enforcement needs, including jail or jails, court rooms, offices and parking. The measure does not specify whether such expenditures would be made on the present site of the main police headquarters at S. W. 2nd and Oak streets, or elsewhere in the city, or whether the funds are to be used for any one or all such needed facilities. The levy would be outside the amount of the city's tax base and the allowable annual increment thereto of six per cent.

II. SCOPE OF RESEARCH

The Committee reviewed the publication "Consolidating Police Functions in Metropolitan Areas" by Max A. Pock, 1962, published under the auspices of the University of Michigan Law School.

It also reviewed the Municipal Jail Report of the City Club Committee of June 18, 1948, Vol. 29, No. 7 of City Club Bulletin.

Members of the Committee interviewed Multnomah County Commissioner Mel Gordon, Mayor Terry D. Schrunk, City Commissioner William Bowes, Multnomah County Sheriff Donald E. Clark and Portland Chief of Police Donald McNamara.

The Committee visited and viewed the facilities at the City Jail, the Sheriff's headquarters and jail facilities in the Multnomah County Courthouse, the Multnomah County Correctional Institution east of Woodvillage and the Multnomah County Rocky Butte Jail.

The Committee was represented at a public hearing called by the Multnomah County Tax Supervising and Conservation Commission on October 12, 1964, at which Mayor Terry D. Schrunk presented his reasons in favor of the measure. He was supported by City Commissioners Ormond Bean, Stanley Earl and Mark Grayson. At this hearing, Multnomah County Commissioner Mel Gordon spoke in opposition to the measure.

In addition, the Committee reviewed newspaper articles and editorials, the Mayor's message to the City Council in 1963, and the minutes of the special Joint City-County Committee.
III. HISTORY AND BACKGROUND

At the present time, Portland has a major police headquarters complex at S. W. Second Avenue and Oak Street in the center core area; an Eastside Precinct at S. E. Seventh Avenue and Alder Street, and a St. John's Precinct at 7214 N. Philadelphia Street.

The original police headquarters at S. W. Second Avenue and Oak Street, occupying a 100 by 100 foot lot, was erected in 1912. There are six floors, including the jail tier. A two-story annex occupying another 100 by 100 foot lot was constructed just west of the original building during World War II, about 1943. The second annex occupying the remaining 100 by 200 feet of the block was erected in 1953 and 1954. This, also, is a two-story structure, but was planned originally to be six stories.

There are presently 136,761 square feet of floor space in these three buildings. The jail occupies 23,398 square feet and the remainder is shared by detectives, a locker room, police academy, firing range, juvenile division, property room, IBM area, parking for automobiles and motorcycles, women's protective division, records, and "two and one-half" courtrooms used by four judges.

The jail at downtown police headquarters was built originally to house 72 prisoners. By triple-decking and conversion of hallways into dormitories, it is possible to bunk 326 persons. The jail has held as many as 416 persons.

The downtown headquarters is the hub of city police activities. All prisoners are booked here. All city prisoners are held for trial here, and all municipal court trials are held in this headquarters.

Parking for official cars or vehicles of those citizens having to report to the facility is limited. In the basement of the headquarters there are 23,980 square feet of space available for parking official automobiles and 1,476 square feet for parking police motorcycles. In addition there are police parking zones on the streets bordering the building.

However, the private citizen must rely on private parking lots, metered spaces and ten-minute public building zones when visiting police headquarters.

The public has voted down bond issues and levies which would have provided improved police facilities in 1945, 1946, 1954, 1958, 1960 and 1962.

IV. ARGUMENTS FOR THE MEASURE

The following are arguments favoring the proposed levy:

1. The need for space is immediate and the situation should not wait for relief until the time-consuming task of joint city-county planning can be completed, since the picture over the past several decades indicates no meeting of the minds, and there is no indication that the future holds any better prospect of agreement. The City Jail facilities are inexcusably overcrowded, sometimes accommodating 300 or 400 prisoners in space which was originally designed for 72 prisoners, necessitating the throwing together of hardened criminals, first offenders, drunks, homosexuals, and others, to the point where the inmates have to sit on the floor along the walls. Except for the addition of two annexes, now used almost entirely for offices, there have been no major improvements to the City Jail facilities since the original construction in 1912.

2. Subject to study by engineers, one immediately available structure could provide more than adequate room. A large waterfront building, originally housing the Public Market and more recently the Oregon Journal newspaper, appears to offer a possible solution. With renovation, this building could provide suitable facilities with adequate offstreet parking for official cars and those of the public, and ready access to main thoroughfares. In addition, construction is such that, after appropriate remodeling, the building could provide custodial facilities of adequate security.
3. The last jail annex was so constructed that four additional stories can
easily be built on the existing two stories without expensive acquisition of valuable
land.

4. This capital improvement fund could be used to build a new Northeast-
Southeast police sub-station, replacing the present poorly located Eastside precinct.

5. The levy would provide funds for a complete study of existing police
facilities, including the possible need for a sub-station in the growing Southwest
section of the city.

6. Solving the overcrowding by boarding prisoners in county facilities is too
expensive. The $2.00 per man per day charge compares unfavorably with the
City's cost of $5.50 a day per man for meals.

V. ARGUMENTS AGAINST THE MEASURE

The following are arguments opposing the proposed levy:

1. The $3,750,000 levy proposal does not indicate any specific projects
in detail. It is a "blank check" permitting expenditures for studies, designs, land,
construction and alteration of new or existing police facilities.

2. There is unused space in county custodial facilities at Rocky Butte and
the Multnomah County Correctional Institution which could more than handle
any excess city prisoners who are serving sentences. The $2.00 per man per day
charge is exceptionally reasonable, considering there is no capital investment
overhead and the fee includes all overhead—custody, facilities, bedding, food,
physical activities, counseling, health and welfare, and not merely meals. Such
arrangements, even on an emergency, short term basis, would relieve the over-
crowding of city facilities until such time as a planned program for joint facilities
could be developed. Further it has been suggested that, with experience, it may
well be possible to negotiate a lower price.

3. Local governmental officials have too long postponed a logical, tax-saving
development of joint facilities to avoid duplication of capital investment and
functions of local law enforcement agencies. Passage of the proposed levy would
only further postpone this needed cooperative planning. Efforts to maintain
completely separate staffs and completely separate facilities for booking, housing
and trial of prisoners are an inexcusable waste of taxpayers' money.

4. Money would be better spent on a well-planned city-county office building,
which would undoubtedly relieve the crowding of the Multnomah County Court-
house jail and court facilities to the extent that joint use of courthouse jail facilities
could be developed for those prisoners awaiting trial—the main purpose for any
downtown jail facility near the courts.

5. Further development of city jail facilities to house prisoners in no way
provides for such modern police activities as prisoner rehabilitation programs, for
instance. These would be available if the city would make use of county facilities
and programs at a nominal fee.

6. Expanded jail facilities would still not provide for adequate separation
of classes of prisoners.

7. The Journal building is not appropriate as a jail, and in any case it is
anticipated that highway needs eventually will require its destruction.

8. "The need to bring a measure of order into the frequently chaotic state
of law enforcement in metropolitan areas is generally being recognized," according
to the University of Michigan Law School Legislative Research Center publication
"Consolidating Police Functions in Metropolitan Areas". Portland and Multnomah
County should be leaders in this movement and not wait until a solution to this
problem is forced upon them.
9. Ninety per cent of arrests made by city police are for drunkenness. There are 13,000 bookings for drunkenness each year, but this total is accounted for by 9,000 individuals. Most sentences for drunkenness run about thirty days. City police may arrest drunken persons for violation of state law prohibiting intoxication or violation of the Portland city ordinance. Those convicted and sentenced on state charges in Multnomah County must serve their sentences at the Rocky Butte jail. Those convicted and sentenced for violating the city ordinance must serve the sentence in the city jail. Until the latter part of September city police and municipal judges had not taken any noticeable advantage of such state laws as may be applicable as a means of relieving the pressure on the city jail.

Late in its study, your Committee learned that the Multnomah County Sheriff plans to move his offices from the County Courthouse to Rocky Butte Jail in about a year. This move would provide ample room for Municipal Courts in the County Courthouse, and could make it possible to renovate the 7th and 8th floors of the County Courthouse into a modern holding jail.

VI. DISCUSSION

Present jail facilities are deplorable and inadequate. This fact has been repeatedly stressed by reports of the Multnomah County Grand Jury. Throughout the years there have been no substantial improvements. Two annexes have been added, but the facilities are still inadequate for a modern police program, including rehabilitation.

Too much emphasis cannot be given to the fact that young minor offenders are thrown together in the City Jail with thugs, drug addicts, homosexuals and ordinary "toughs."

In his report to Mayor Terry D. Schrunk on August 27, 1964, following a study of police headquarters building space, Chief of Police Donald I. McNamara stated that several divisions operating out of the building "are at the critical stage right now. These include the IBM area which is very cramped, the juvenile division which has no area to handle groups of arrested offenders, the property room which frequently has items stacked in the hallway and janitors' quarters, and the courts, which are operating with four judges but only 2 1/2 courtrooms."

City officials have not taken full advantage of county facilities available for their use. It has only been in recent weeks that habitual intoxication offenders who have been arrested for state law violation have been sent to Multnomah County's Rocky Butte jail, thus affording some relief to the crowded City Jail. Rocky Butte has not been operating at full capacity and neither has the Multnomah County Correctional Institution.

The offer by Multnomah County to board city prisoners at $2.00 a day per man includes not only food, but housing, rehabilitation, physical programs, work programs, health and welfare services, laundry, bedding and incidentals. This is the charge the County currently makes for holding prisoners from other jurisdictions. It has been suggested that this price may be subject to negotiation.

At the $2 per day rate, 100 city prisoners could be cared for by Multnomah County for more than 51 years for the sum of $3,750,000.

There is a definite need for long-range planning and cooperation at local government levels. Portland is not alone with a metropolitan law enforcement problem, but other metropolitan areas are doing something about it. The expense of duplication and confusion of overlapping jurisdiction must be eliminated. There appears to be little reason why communications facilities, prisoner records, a police academy, and vehicular equipment maintenance could not be consolidated by the City Police and County Sheriff.

The following is a summary of the various suggestions mentioned to the Committee for spending the proceeds of the $3,750,000 tax levy:
1. Build more stories on the existing S. W. Second Avenue and Oak Street station.

2. Buy more property at S. W. Second Avenue and Oak Street and build a new jail and additional police facilities.

3. Acquire land and build new city police, court and jail facility near the present City Hall and County Courthouse.

4. Build a new Hall of Justice on the jointly-owned block between the City Hall and the County Courthouse to include police, sheriff and court facilities and other local government functions.

5. Remodel the old Oregon Journal building on S. W. Front Avenue.

6. Build new precinct stations at locations which will serve better the increasing population of Portland.

Negotiations between city and county officials, looking toward cooperation in handling prisoners, booking procedures, technical police functions and record keeping, have been going on while the Committee was making its study. It was the impression of your Committee that little progress had been made by the existing Special Joint City-County Committee. It is evident to the members of the Committee that the degree and nature of coordination between City Police and the County Sheriff's office should determine to a large degree the location and type of facilities to be built with the tax levy. When cooperation has been worked out, then careful architectural, engineering and operating studies will be needed to plan properly the expenditure of the funds on a city-County basis.

Your Committee was unable to discover the extent of probable agreement between city and county. In response to its direct questions, your Committee was told that there were no studies or plans on which the request for $3,750,000 instead of $5,000,000 or $2,000,000 or some other sum was based. The levy would provide funds for the necessary studies and plans, and the remaining money presumably would be spent in accordance therewith. Presumably further levies would be proposed as required.

**VII. CONCLUSIONS**

1. The City Jail is inadequate, overcrowded and a disgrace to the community, but City Officials are not taking advantage of available relief through sharing of overcrowded facilities of the County.

2. While exact comparisons are not available, it appears to your Committee that it would be better to board prisoners in existing county facilities than to expend millions of dollars for facilities that perpetuate existing obsolete structures and continue two law enforcement agencies in this metropolitan area.

3. A downtown facility need not be expanded to house long-term prisoners under sentence for various degrees of crime. Facilities need only be adequate for those awaiting immediate trial. Stays in downtown facilities should be temporary to the point of hours or days. Any sentenced prisoner should be transferred out of the headquarters facility.

4. The proposed tax levy would do nothing toward combining the Police Department and the Multnomah County Sheriff's office.

5. It appears to your Committee that the use of County facilities offers a temporary relief to the overcrowding.

6. It is long past time that master planning be developed for a permanent solution.
VIII. RECOMMENDATIONS

1. Your Committee recommends that a complete study of the law enforce-
ment problem in the City of Portland and Multnomah County be made before
any proposal is submitted to the voters for funds for any individual project not
related to over-all metropolitan needs.

2. Your Committee recommends that the City Police and the Multnomah
County Sheriff attempt to eliminate duplication of effort in carrying out their
responsibilities.

3. Your Committee unanimously recommends that the City Club go on
record as opposing this measure and urges a vote of “No” on Municipal Measure
No. 53.

Respectfully submitted,

Harvey Barragar
Malcolm A. Blanchard
John K. Dukehart
Robert H. Elsner
William J. Masters
James H. Zilka
Douglas Polivka, Chairman

Approved October 12, 1964 by the Research Board for transmittal to the Board of
Governors.

Received by the Board of Governors October 13, 1964 and ordered printed and submitted
to the membership for action.
OUTLINE
CAPITAL PUNISHMENT REPORT

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   2. U. S. Experience

B. Oregon Experience and Practice
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REPORT
ON
CAPITAL PUNISHMENT BILL
(State Measure No. 1)

Purpose: To amend Constitution to abolish the death penalty for murder in the first degree and to make the penalty life imprisonment.

To the Board of Governors,
The City Club of Portland:

I. ASSIGNMENT

Your Committee was requested in February, 1964, to report on Ballot Measure No. 1, entitled, "Capital Punishment Bill," appearing on the November 3, 1964 state ballot.

This proposed constitutional amendment originated as Senate Joint Resolution No. 3, and was referred to the electorate in May, 1963, by the Legislative Assembly.

The measure would repeal Sections 37 and 38, Article I of the Oregon Constitution, which sections were adopted in 1920. Section 37 now provides:

"The penalty for murder in the first degree shall be death, except when the trial jury shall in its verdict recommend life imprisonment, in which case the penalty shall be life imprisonment."

Section 38 revived the laws pertaining to the death penalty which had been abrogated in 1914 when Oregon abolished capital punishment. If State Ballot Measure No. 1 is approved, the Legislature becomes responsible for establishing the penalty for first degree murder. In anticipation of this, the 1963 Legislature passed Senate Bill 10, to become effective only if Ballot Measure No. 1 is approved. Senate Bill 10 would amend existing Oregon statutes as follows:

(1) The minimum term of imprisonment for a person convicted of first degree murder (before he is eligible for parole) would be increased from 7 to 10 years;

(2) A person convicted of first degree murder who is subsequently paroled could not be issued (as at present) a certificate of discharge by the State Board of Parole and Probation;

(3) The penalty for treason and first degree murder would be life imprisonment;

(4) The maximum penalty for second degree murder would be changed from life to 25 years imprisonment.

II. SCOPE OF INQUIRY AND SOURCES OF INFORMATION

Your Committee first surveyed the literature in the field of criminology in general, and capital punishment in particular. It soon became evident that the volume of published material was so extensive as to be almost overwhelming. The Committee concluded that to make a more pertinent contribution and to reduce research to manageable proportions, it should focus on the question as it related to Oregon.

The Committee inquired first into the arguments dealing with capital punishment in general, and then into those relating to the specific legislation on the ballot. As used in this report, the term "abolition" means the abolition of capital punishment, and the term "capital crime" means a crime punishable by death.
Since, to our knowledge, there has never been a case involving treason under Oregon law, the Committee has not considered the proposed change relating to treason. Furthermore, treason undoubtedly would be treated as a matter of federal rather than of state law.

Although comparative costs of execution versus life imprisonment have been used as arguments, pro and con, this Committee believes such costs, both direct and indirect, have not been accurately measured in monetary terms. Such a study is beyond the resources of this Committee. Therefore the cost argument is not considered in this report.

While it was impossible to contact all who possess expert knowledge relating to the issues, the Committee attempted to obtain a cross-section of the many diverse viewpoints. Since February of 1964 your Committee has interviewed, amongst others, the following persons with differing views on the measure:

Hugo Adam Bedau, author of "The Death Penalty in America", and Associate Professor of Philosophy, Reed College.

John Buttler, attorney, Member, Oregon Board of Parole and Probation.

The Rev. William B. Cate, Executive Secretary, Greater Portland Council of Churches.

Donald E. Clark, Sheriff, Multnomah County.

Clarence T. Gladden, Warden, Oregon State Penitentiary.

Judge Robert E. Jones, Multnomah County Circuit Court, and former member, Judiciary Committee, Oregon House of Representatives.

Philip D. Lang, State Representative, member, House Judiciary Committee.

Duane C. Lemley, Staff Consultant, Oregon Council on Crime and Delinquency.

Berkeley Lent, State Representative and Chairman, House Judiciary Committee.

Walter Nunley, Attorney, former District Attorney, Jackson County, Oregon.

H. M. Randall, Director, State Board of Parole and Probation.

Judge Herbert M. Schwab, Multnomah County Circuit Court.

Paul J. Squier, then Superintendent, Oregon Correctional Institution.

George Van Hoomissen, Multnomah County District Attorney, former member, Oregon House of Representatives, Chairman, 1961 House Judiciary Committee, and member, 1959-61 Legislative Interim Committee on Criminal Law.

Don S. Willner, State Senator, and Sponsor of Senate Joint Resolution No. 3.

Written statements were received from The Rev. Paul Pfotenhauer, Holy Sacraments Lutheran Church, Portland; from the Portland office of FBI stating views of Director J. Edgar Hoover, and from the late David H. Johnson, then Chief of Police, City of Portland. The taped testimony of Paul Harvey, Jr., Associated Press, Salem, before the Oregon Senate Judiciary Committee on March 22, 1963, was also heard. Governor Hatfield and ex-Governors John H. Hall, Robert D. Holmes, Elmo Smith and Charles A. Sprague expressed their views in letters to the Committee.

Letters were also directed to the prison wardens of the eight states which have abolished capital punishment, either completely or partially. Replies were received from six: Alaska, Maine, Michigan, Minnesota, North Dakota and Wisconsin.

The Committee wishes to thank all who helped by giving interviews, by submitting written statements, or in other ways. The Committee is particularly indebted to Clarence T. Gladden, Warden, Oregon State Penitentiary, for the extensive research materials furnished by his staff at the Committee's request.
III. GENERAL BACKGROUND AND HISTORY OF CAPITAL PUNISHMENT

A. World and United States Experience

Several studies of local, national and international scope have been undertaken to investigate and outline the history, emphasize the trends, and evaluate and criticize the arguments for and against the use of the death penalty as legal punishment. These studies range from the Report of the British Royal Commission on Capital Punishment (1949-1953), and the United Nations Report on Capital Punishment (1962), to reports of state legislative committees, civic groups, and individuals. Significantly, these studies show a trend toward a gradual restriction in the use of capital punishment, either through limited use or abolition.

1. World Experience

Throughout history, methods of execution have varied widely—from the basically simple to the bizarre. In ancient Egypt the offender was his own executioner by a method of his own choosing. One early English practice was to throw the offender into a quagmire. During the Middle Ages, the number of capital crimes increased sharply, methods became even more cruel, and executions became public events, attended by large crowds.

In England, the number of capital crimes increased from eight in 1600 to approximately fifty by 1688, and reached a peak of over 200 in the early 1800's. The trend was reversed in the nineteenth century. By 1863, only three capital offenses remained, and in practice the death penalty was inflicted only in cases of murder. Today, England reserves the death penalty for multiple murder or the killing of a policeman.

In most Western countries, the use of capital punishment has been markedly reduced and executions have lost their public nature. The United Nations Report as of 1961, lists the following twenty-five of the reporting countries as having abolished the death penalty:

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<td>Venezuela</td>
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<td>Denmark</td>
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<td>1865</td>
<td>Republic of San Marino</td>
<td>1931</td>
<td>Mexico (25 of 29 states, and Federal)</td>
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<td>1867</td>
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<td>The Netherlands</td>
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Four other countries—Belgium, Lichtenstein, Luxembour and Vatican City—although retaining the death penalty, have discontinued its use.

2. U. S. Experience

Movements to limit the use of the death penalty started early in our history. In 1794, Pennsylvania first legislated a category of murder which was not a capital offense—that of second degree murder. Other states established additional degrees of non-capital homicide allowing many different interpretations of a killing. Michigan in 1846 became the first English-speaking jurisdiction to abolish the death penalty (except for treason). Thereafter, the death penalty was abolished (with certain exceptions) in Rhode Island (1852), Wisconsin (1853), Maine (1889), Minnesota (1911) and North Dakota (1914). Rhode Island, for example, retained capital punishment for murder by a prisoner serving a life sentence. Hawaii (1957)
and Alaska (1957) abolished the death penalty prior to gaining statehood. Washington, D.C. (1962) and New York (1963) have abolished the mandatory death sentence. Today only five states are completely abolitionist: Alaska, Hawaii, Maine, Minnesota and Wisconsin.

Eight states have reinstated the death penalty after abolishing it. Maine has abolished the death penalty twice. Delaware abolished the death penalty in 1958 and reinstated it in 1961.

In the United States, fewer executions were carried out in 1963 than in any previous year. The twenty-one executions in 1963 were half the number of executions in 1961, the previous low year since the Bureau of Prisons started publishing its tabulations in 1930. Of the thirty-one capital offenses reported in the United States, only six are represented in the statistics of prisoners reported under sentence of death in 1963.

The general trend, with some fluctuations, is thus characterized by:
- abolition of the death penalty by law or disuse;
- permissive rather than mandatory sentence of death;
- reduction in the number of executions;
- removal of the general public from the place of execution.

B. Oregon Experience and Practice

1. In General

The definitions of first and second degree murder in Oregon have not been substantially changed since the adoption of the original Code of Criminal Procedure by the Legislative Assembly in 1864. Both first and second degree murder require the elements of purpose and malice. They are distinguished in that first degree murder also requires the elements of deliberation and premeditation, whereas second degree murder does not. First degree murder also includes the killing of any peace officer who is acting in line of duty, and a killing committed in the commission of or attempt to commit rape, arson, robbery or burglary. A killing committed without premeditation in the commission or attempt to commit any other felony is classed as second degree murder.

Oregon's original Code of Criminal Procedure provided a mandatory sentence of death by hanging for first degree murder. The penalty for second degree murder was life imprisonment, as it is today.

Article I, Section 15 of the Oregon Constitution declares: "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice." The Supreme Court of Oregon, in State v. Finch (1909) 54 Or 482, held that imposition of the death penalty does not violate this constitutional provision. As recently as March of 1963, the Court stated:

"We interpret Art. I, Section 15, of the Oregon Bill of Rights to command and require that Oregon sentencing laws have as their object reformation and not retaliation, but they do not require that reformation be sought at substantial risk to the people of the state . . . ."

"The drafters of the constitution, however, did not include the most important consideration of all, the protection and safety of the people of the state. Such a principle does not have to be expressed in the constitution as it is the reason for criminal law. All jurisdictions recognize its overriding importance." Tuel v. Gladdeu, 234 Or 1.

2. Criminal Procedures

The legal procedures relating to pre-trial, trial, and post-conviction handling of a first degree murder case will be discussed briefly to provide a basis for understanding the discussion of arguments which follow later in this report.

Upon arrest, a suspect must promptly be taken for a preliminary hearing before a magistrate, who must immediately inform him of the charge against him.
of his right to the aid of counsel, and of his right to remain silent. Oregon law requires that “suitable” counsel be appointed for him if he so requests and provides evidence of his inability to obtain counsel.

If the magistrate decides that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, he orders the accused “held to answer” and commits him to custody. Unless waived by the accused, the matter must be referred to a grand jury. If presentment to a grand jury is waived, the district attorney can file an information against the accused.

After indictment or the filing of an information, the accused is taken before a judge for arraignment. The charge is again read to him, and, if he appears without counsel, he is informed of his right to counsel. The judge must specifically ask him whether or not he desires to have counsel appointed for him. If the accused answers affirmatively, the judge will appoint counsel, again upon a showing of inability, and give him an opportunity to confer with such counsel. The accused is then asked by the judge to plead to the charge. Usually a defendant pleads not guilty and exercises his constitutional right to trial by jury. If he wishes to plead guilty, he must waive his right to trial by jury and “confess in open court”, at which time the judge will hold a hearing to determine guilt and, if necessary, sentence. (ORS 163.130)

At trial, the jury must determine guilt or innocence and, if “guilty,” whether the sentence shall be death or life imprisonment. The verdict must be unanimous to convict for first degree murder. Although the charge is murder in the first degree, the jury may find the defendant guilty of a lesser homicide, such as second degree murder, or manslaughter.

If the accused wishes to raise the defense of insanity, he must give written notice prior to trial. The question of sanity is a factual one and eventually must be decided by a jury. However, since sanity is presumed, the burden rests upon the defendant to prove his insanity by a preponderance of the evidence.

Since 1955, all first degree murder convictions are automatically reviewed by the Oregon Supreme Court. Additional post-conviction relief is provided by a 1959 statute. The 1963 Legislature created the position of Public Defender for post-conviction appeals and his services are available to indigent persons. After exhausting his remedies in the State courts, the accused may appeal to the U. S. Supreme Court or apply for relief to the federal courts on a claim of violation of some constitutional right. Again, counsel may be appointed to assist him.

After court remedies are exhausted (which process may last over a period of years), the final recourse is to petition the governor for relief. The governor’s power of executive clemency is, of course, discretionary and has seldom been exercised in Oregon.

The above procedures are the result of gradual changes designed to furnish greater protection for the accused, minimize the possibility of error, and equalize justice.

3. Changes in Death Penalty Laws

The penalty for first degree murder in Oregon was originally a mandatory death sentence prescribed by statute. Executions were conducted by the county sheriffs in jailyards and other public places. In 1903, in order to limit public attendance, the Legislature provided that executions be conducted by the warden within the penitentiary:

“Sec. 1457. The punishment of death must be inflicted by hanging the defendant by the neck until he be dead, and the judgment must be executed by the superintendent or one of the wardens of the penitentiary. The superintendent of the penitentiary must be present at the execution, and must invite the presence of one or more physicians, the Attorney General of the state, the sheriff of the county in which the judgment was rendered, and at least twelve reputable citizens, to be
selected by him; and he shall, at the request of the defendant, permit
such ministers of the gospel, not exceeding two, as the defendant may
name, and, in the discretion of the superintendent of the penitentiary,
such relatives and friends of the defendant as he may designate, not
to exceed five, to be present at the execution, together with such peace
officers as such superintendent may think expedient; but no other
persons than those mentioned in this section can be present at the
execution, nor can any person under the age of twenty-one years be
allowed to witness the same."

These provisions are essentially unchanged today, except that in 1937, the
method of execution was changed from hanging to cyanide gas.

The issue of capital punishment has previously been referred to the Oregon
voters four times. The voting record was:

<table>
<thead>
<tr>
<th>Year</th>
<th>For Capital Punishment</th>
<th>Against Capital Punishment</th>
<th>For Capital Punishment</th>
<th>Against Capital Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1912</td>
<td>64,758</td>
<td>41,951</td>
<td>22,627</td>
<td>157</td>
</tr>
<tr>
<td>1914</td>
<td>100,395</td>
<td>100,552</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1920</td>
<td>81,756</td>
<td>64,589</td>
<td>17,167</td>
<td></td>
</tr>
<tr>
<td>1958</td>
<td>276,487</td>
<td>264,434</td>
<td>12,053</td>
<td></td>
</tr>
</tbody>
</table>

The Oregon elections of 1912 and 1914 took place at a time of widespread
interest in the subject. Seven states altered their capital punishment laws during
a three-year period. Governor Oswald West strongly urged the adoption of both
the 1912 and 1914 proposed constitutional amendments. The 1914 abolition
measure passed by an extremely narrow margin (157). Until then, Oregon was
one of the few remaining states with a mandatory death sentence.

During World War I and the immediate post-war years, Oregon and four
other states re-established the death penalty. The Oregon measure (Sections 37
and 38 of Article I), passed on May 21, 1920, became effective the following
month, and established a discretionary, rather than the pre-1914 mandatory death
penalty. The current ballot measure proposes to repeal these 1920 constitutional
amendments.

In 1958, after a 38-year period, a proposal to abolish capital punishment
was placed on the ballot, and lost by a margin of some 12,000 votes. It has been
claimed that the ballot title was confusing to the voter.

In summary, the changes in the maximum sentence for first degree murder
have been:

From 1864 to Dec. 2, 1914: Mandatory death penalty (statutory).
From Dec. 3, 1914 to June 17, 1920: Abolition of death penalty;
substitution of life imprisonment (constitutional).
From June 18, 1920 to present: Discretionary death penalty (constitutional).

4. Trends in Oregon Experience

Records of the disposition of murderers received at the Oregon State Peni-
tentiary have been kept since 1903 when the responsibility for executions was
transferred to the warden. Of the 481 murderers received in the 61-year period
between January 1, 1903 and December 31, 1963, 167 (35 per cent) were
convicted of first degree murder, and 314 (65 per cent) of second degree. (It
should be noted that all murder convictions during the 1915 to 1919 period of
abolition were classed as second degree.) Since the restoration of capital punish-
ment in 1920, the ratio of first degree to total first and second degree convictions
has steadily declined:
### Ratio of First Degree to Total First and Second Degree Convictions

**Received at Oregon Penitentiary 1920-1959, inclusive**

<table>
<thead>
<tr>
<th>Period</th>
<th>First Degree</th>
<th>Second Degree</th>
<th>Total</th>
<th>Percentage First Degree</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920-29</td>
<td>45</td>
<td>29</td>
<td>74</td>
<td>61%</td>
</tr>
<tr>
<td>1930-39</td>
<td>26</td>
<td>43</td>
<td>69</td>
<td>38%</td>
</tr>
<tr>
<td>1940-49</td>
<td>31</td>
<td>60</td>
<td>91</td>
<td>34%</td>
</tr>
<tr>
<td>1950-59</td>
<td>17</td>
<td>54</td>
<td>71</td>
<td>24%</td>
</tr>
</tbody>
</table>

The following table shows the ultimate disposition of these 481 prisoners.

### Disposition of Prisoners Convicted of First and Second Degree

**Received at Oregon State Penitentiary 1903-1963**

<table>
<thead>
<tr>
<th>Disposition</th>
<th>First Degree</th>
<th>Second Degree</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executed</td>
<td>58</td>
<td>—</td>
<td>58</td>
</tr>
<tr>
<td>Discharged (1)</td>
<td>1</td>
<td>4</td>
<td>29</td>
</tr>
<tr>
<td>Pardoned (2)</td>
<td>9</td>
<td>17</td>
<td>110</td>
</tr>
<tr>
<td>Paroled</td>
<td>5</td>
<td>28</td>
<td>95</td>
</tr>
<tr>
<td>Died—Natural Causes &amp; Suicide (3)</td>
<td>9</td>
<td>21</td>
<td>123</td>
</tr>
<tr>
<td>Still incarcerated (4)</td>
<td>3</td>
<td>2</td>
<td>17</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>89 (4)</strong></td>
<td><strong>78</strong></td>
<td><strong>481</strong></td>
</tr>
</tbody>
</table>

(1) Probably means man's time was commuted to the time served.
(2) Includes conditional pardons, used prior to establishment of the Parole Board in 1939.
(3) Four under sentence of death.
(4) Does not include three convicted at trial, who were never committed to penitentiary.

Eighty-nine of the 167 first degree murderers were under sentence of death. Of these, 58 were executed, 40 by hanging and 18 by gas. Oregon has executed 18 people in the last 32 years but only one (in 1962) in the last eleven years. Fourteen condemned inmates were eventually paroled or pardoned.

The number of first and second degree murderers received at the penitentiary has fluctuated since 1905 and is apparently not related to the presence or absence of capital punishment. The experience tabulated in five-year periods since 1905 has been:

<table>
<thead>
<tr>
<th>Death Penalty</th>
<th>Period</th>
<th>Prisons Convicted of First or Second Degree Murder Received at Oregon Penitentiary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory</td>
<td>1905-1909</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>1910-1914</td>
<td>57</td>
</tr>
<tr>
<td>Abolition</td>
<td>1915-1919</td>
<td>38</td>
</tr>
<tr>
<td>Discretionary</td>
<td>1920-1924</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>1925-1929</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>1930-1934</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>1935-1939</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>1940-1944</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>1945-1949</td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>1950-1954</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>1955-1959</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>1959-1963</td>
<td>29 (4 years only)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>469</strong></td>
</tr>
</tbody>
</table>
The foregoing statistics do not take into account the dramatic increases in Oregon population since the turn of the century. The Oregon homicide rates have been substantially below the national rates in all years since the statistics were first available in 1918. Both have experienced a long-term decline.

5. Parole Experience

Prior to 1939 the Board of Parole and Probation was advisory only, and the Governor made each parole decision. At present the Board, among its other powers, establishes rules and regulations under which any penitentiary prisoner, other than one under sentence of death, may be paroled; supervises all persons released from the state penitentiary on parole or conditional pardon, makes such investigations as may be necessary, and revokes the parole of those who violate parole conditions. ORS 144.230 provides:

“No person serving a life sentence in the penitentiary for murder in the first or second degree is eligible for release on parole until he has served at least seven years of his sentence.”

ORS 144.240 provides:

“No prisoner in the state penitentiary shall be paroled unless it is the opinion of the board that, within a reasonable probability, the prisoner will, after parole, remain outside the institution without violating the law and that such release is not incompatible with the welfare of society.”

Of the 187 first and second degree murderers paroled or conditionally pardoned since 1939, only seven have had their paroles revoked because of commission of new crimes, none of which has been another murder. Forty-five other paroles have been revoked for violation of parole conditions. Under present policy most second degree murderers who are paroled are placed on parole during the eighth, ninth, or tenth years of their incarceration. Most first degree murderers who are paroled serve ten to twelve years, although some are paroled immediately after having served the minimum seven-year period. The governing consideration is the probability of rehabilitation, rather than the degree of murder for which convicted. The Board customarily supervises murderers on parole for ten years before issuing a final certificate of discharge. Some individuals now in custody will probably never be rehabilitated and placed on parole. Twenty-four murderers have served sentences ranging between 26 and 49 years.

6. Summary of Oregon Experience

a. The general public is excluded from the death chamber (1903);
b. The death sentence is discretionary rather than mandatory (1920);
c. The form of the lethal appliance is gas, rather than hanging (1937);
d. A high proportion of paroled murderers are successfully rehabilitated;
e. There is no apparent statistical relationship between the number of commitments for murder and the presence or absence of the death penalty;
f. There is a decline in homicide rates, in the ratio of first degree to total first and second degree convictions, and in the number of executions.

IV. ARGUMENTS DEALING WITH CAPITAL PUNISHMENT GENERALLY

A. Philosophic Considerations: Rehabilitation and Retribution

The Committee has examined philosophic and religious statements on the subject of capital punishment. From pre-Christian times to the present, there appear to be authoritative declarations on both sides of the question, although, until the twentieth century, the preponderance of philosophic writings favored retributive justice. The Bible has been interpreted to provide justification on either side. Biblical arguments put forth in favor of retribution and capital punishment are usually based on the Old Testament, whereas Biblical arguments favoring
rehabilitation and abolition modify Old Testament precepts with the New Testament. The Committee heard from clergymen supporting and opposing abolition of capital punishment. Their views are summarized for your evaluation.

Retribution. Some proponents hold that capital punishment constitutes a just penalty for the severity of the crime committed. The State has an obligation to provide and promote the common good of its people. For its law to achieve this result, the State must add sanctions to these laws. This view, according to the British Royal Commission holds:

"The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. The ultimate justification of [this] punishment . . . is the emphatic denunciation by the community of [the] crime . . . [no] excuse should . . . free [the murderer] from a punishment fitting the crime committed . . . Retribution . . . is simply seeing that justice is done." Report of British Royal Commission on Capital Punishment, p. 18.

It is argued that the use of free will to take another's life implies a willingness to risk the deprivation of one's own life. Although the victim may be willing to turn his cheek, the state is obligated to mete out the ultimate equivalent punishment—death. Executions do not brutalize society, but are solemn warnings to other men and may even move the condemned to make the spiritual adjustment necessary for ultimate salvation. Capital punishment restores the social equilibrium. The restoring agency is the State (Romans 13). The State rewards good conduct in the same fashion that it must also execute God's wrath on the wrongdoers "Whosoever sheddeth man's blood, by man shall his blood be shed, for in the image of God made he man." (Genesis 8)

Rehabilitation. Those opposing capital punishment argue in rebuttal that the theory of punishment embodies three objectives: Reform, the protection of society when reform has failed, and deterrence to others who may consider committing the same crimes. They hold that retribution has no place in a civilized society. Our social values today reflect an ever-deepening commitment to the sanctity of human life. Modern penology is premised on the concept that the wrongdoer should be rehabilitated or redeemed. The transition of man's attitude from brutal treatment of criminals to rehabilitation and redemption has been slow and uneven, but there has been progress. Capital punishment is inconsistent with this development. Punishment is both necessary and moral, but only for purposes of reformation and protection. In support of this view, Governor Robert D. Holmes declared (January 14, 1957):

"It is my feeling that state government has an obligation to be civilized, even in the exercise of its obligation to protect society from desperate and murderous criminals. And I find nothing in enlightened religion or the ethics of modern civilization that justifies an 'eye for an eye' philosophy."

Opponents of capital punishment hold that present evidence shows clearly the failure of capital punishment as an instrument of retributive justice. It has not been applied consistently or fairly. Further, any possibility of reformation is impossible if the death penalty is exacted.

Those urging rehabilitation further contend that in the last analysis, the argument against capital punishment rests on one's moral and religious philosophy, on one's view of man's inherent worth and dignity.

B. Capital Punishment as a Deterrent to Crime

Whether the death penalty serves as a more effective deterrent to murder than alternative penalties is the most widely debated issue relating to the capital punishment question.

Supporters of capital punishment contend that no punishment can possibly have as great a deterrent effect as the threat of death because "All that man has
will he give for his life.” Since people fear death more than anything else, the death penalty has a unique deterrent force. Capital punishment therefore provides society with the greatest protection from the acts of potential killers.

Some proponents of the death penalty argue that its existence is justified if only one victim is spared because of its deterrent effect upon a potential murderer. Certainly, no executed murderer can kill again. While its failures can be documented, its successes cannot. No one will ever know the number of people who have refrained from murder because of the fear of being executed.

It is also reported that capital punishment has another important effect. The Royal Commission summarized this argument:

“operates not only by affecting the conscious thoughts of individuals tempted to commit murder, but also by building up in the community, over a long period of time a deep feeling of peculiar abhorrence for the crime of murder. ‘The fact that men are hung for murder is one great reason why murder is considered so dreadful a crime’.” Royal Commission on Capital Punishment, p. 20.

Opponents of capital punishment deny its deterrent value by questioning the underlying assumption that murderers act rationally and choose deliberately between alternative courses of action and their foreseeable consequences. On the contrary, it is asserted they nearly always kill under conditions of great emotional stress, when reasoned analysis of possible consequences is difficult if not impossible.

In 1956, former Warden Clinton Duffy of San Quentin Prison stated, in a paper delivered at the Annual Conference of Corrections:

“From 1929 to 1952 I talked with every man that was committed to San Quentin Prison under the penalty of death . . . I have personally asked every man (and two women) if they gave any thought to the fact that they might be executed . . . I have, to date, not had one person say that he had ever thought of the death penalty prior to the commission of the crime.”

In Oregon, as elsewhere, many murder victims are spouses, other family members, close friends, or paramours of the murderers. Frequently the murderer was under the influence of alcohol. Of 82 murderers recently serving sentences in the Oregon State Penitentiary, 52 killed persons in the above categories, 20 killed while in the process of committing another crime, and 10 killed strangers while engaged in drinking alcoholic beverages.

The evidence thus indicates that in Oregon murder is most commonly a crime of passion committed in a state of anger or fright. The perpetrator is usually provoked into rage by the actions or threats on the part of his victim. By the time he reaches the point of committing murder, his emotions are reportedly so overwhelming that his intellect is not aware of reasons to deter his actions. In some cases the murder of passion is not intended in the criminal’s mind to be murder at all, but is only an effort to hurt his victim and continue hurting him. The fact of death is incidental. The effectiveness of capital punishment as a deterrent seems very remote in such cases. It likewise could not be a deterrent in a mind befuddled by alcohol.

The man who kills a policeman to escape incarceration for another crime usually has in mind only the idea of escape and of eliminating anything which interferes with it. In his fright, he does not appreciate the quality of his act as a “killing”. Again it is virtually inconceivable that the thought of punishment is an important consideration at such a hectic moment.

Some advocates of capital punishment point to the documented cases where robbers in capital punishment jurisdictions have carried toy pistols so as to avoid accidental killings. In answer, it is claimed such men are not murderers and probably would not carry a gun in any jurisdiction.

It can be plausibly argued that one who commits a carefully premeditated murder plans to make his detection impossible. In the sense that he expects to
escape detection and punishment entirely, it is obvious that the presence or absence of a death penalty means nothing. He will escape any punishment, he thinks, and therefore the degree of punishment is not considered.

It is maintained that one who plots a murder but decides not to complete it may think that he didn't kill because of the risks involved, such as imprisonment. According to psychological theory, however, the true explanation is that he values his self respect more than he does the death of his intended victim.

According to psychodynamic theory, there is within everyone some desire to commit crimes; no one can grow to adulthood without experiencing temptations to steal, cheat and kill, although such impulses may not be readily recalled. Killing, the most basic, primitive, and universal method of disposing of an undesirable person, is often thought about, but thoughts (impulses) about killing seldom result in action because of much more powerful inhibiting forces. People subconsciously fear that under conditions of stress, the inhibiting forces might be too weak, resulting in a loss of control. The example of a murderer reawakens an abhorrence of their own feared potential creating a feeling of anxiety and discomfort. Since the murderer is the apparent cause of their distress, he becomes the one abhorred and must be eliminated—really for the crime of disturbing the public peace of mind. People think that the threat of death will be a deterrent to others, but according to this theory, it really represents a wish that it be a deterrent to violence primarily within themselves. Faith in capital punishment is therefore comforting.

Many statistical studies have been made to determine whether capital punishment has any differential deterrent effect. Most of those studies compare homicide rates in states with and without the death penalty, or in single states in which capital punishment has been abolished for periods before and after abolition. Comparisons are difficult and frequently subject to question because of a great number of environmental variables other than the penalty for murder, such as population densities, economic conditions, educational levels, cultural backgrounds, and the like. The most carefully weighted comparisons of homicide rates were probably those made in 1959 by Professor Thorsten Sellin for the Model Penal Code project of the American Law Institute. He selected five sets of three adjoining states and compared homicide rates. States were grouped because of similarity in social and economic conditions, and each set contained states with and without capital punishment. For example, the rates in Maine, without capital punishment, were remarkably similar to New Hampshire and Vermont, both with capital punishment. Although homicide rates varied between sets, within the sets they were strikingly similar in states with and without capital punishment. Sellin's conclusion was "whether the penalty is used or not and whether executions are frequent or not, both death penalty states and abolition states show rates which suggest that these rates are conditioned by other factors than the death penalty."

In 1961, the Ohio Legislative Service Commission Report on Capital Punishment, after studying crude homicide rates within the same states before and after abandonment of capital punishment, concluded that the comparisons "do not provide conclusive statistical evidence that the death penalty deters or does not deter homicides."

The British Royal Commission on Capital Punishment concluded, after a review of many statistical studies, "that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall."

Your Committee can find no statistical evidence in the many studies it has examined that indicate any deterrent effect attributable specifically to the existence of capital punishment. The data reviewed by your Committee indicated that the murder rate is not affected by the presence or absence of the death penalty, but rather by the conditions of life and social attitudes within the state. This supports the concept that murder is the product of many forces uninfluenced by the form of punishment.
It should be noted that there is some statistical (Sellin) and psychological evidence that the presence of the death penalty may in some instances serve as an incentive to murder. The publicity given any capital case may appeal to some people with personality disturbances that include exhibitionistic urges. Others with depressive trends may use this device as a way of trapping the state into ending their lives, because they lack the courage to commit suicide.

In conclusion, your Committee found no statistical or psychological evidence that capital punishment is a significant deterrent to murder.

C. Impact on Administration of Justice

While the death penalty is defended in theory as the concomitant of an orderly, moral, and legal system (an assumption questioned elsewhere in this report), its application is affected by the men who administer that system, and vice versa. Therefore, it is useful to consider and evaluate the practical effects, if any, that the death penalty has upon the conduct of a first degree murder case.

1. Prosecution

Once an indictment or information charges first degree murder, a homicide becomes a capital offense, and state-imposed execution first emerges as a possible outcome. The prosecutor can exploit that possibility in several ways: As sole legal adviser to the grand jury (indictment) or court (information), he can expect that a charge of first degree murder will be approved; he can use the accused’s fear of execution to press for a guilty plea to a lesser offense; and upon trial, he can stress the trial jury’s power to punish, to the exclusion of its primary duty to convict or acquit. There are also counter-pressures: The conduct of the trial is controlled by a judge, who is familiar with defense-oriented rules of law and alert to acts which might prejudice the defendant’s rights, and by the skill of defense counsel. In addition, juries, usually reluctant to convict in capital cases, often react to “over-tried” cases by acquitting the defendant.

2. Defendant

It is reasonable to expect that, in contrast to his condition of mental unrest at the time he commits his crime, the accused will give more sober reflection to his fate in a capital than in a non-capital case. Whereas imprisonment, however sterile an existence, can be endured, the threat of extinction challenges his basic instinct to survive. He rarely “confesses in open court”, probably because of his fear of the death penalty. If so, removal of the death penalty would result in an increased number of guilty pleas, thereby providing more effective enforcement of the law.

It is also possible that certain defendants, particularly those who are innocent, or those afflicted with mental illness who are unable to meet the test of legal insanity, might, out of fear of execution, become irrational or otherwise be unable or unwilling to assist in their own defense. The case of the innocent man is further complicated by the fact that he may prefer not to run the risk of execution at any cost, and plead guilty to a lesser offense.

On the other hand, the legal system provides safeguards for the accused. Judges are better prepared than juries to evaluate evidence and pass reasoned judgment in meting out sentence. Generally, the Oregon courts have been careful to appoint competent trial attorneys to represent indigent defendants. In Multnomah County, two experienced trial attorneys are appointed to represent an indigent person accused of murder. Several persons interviewed stated that such indigents usually have better legal representation than most other criminal defendants can afford.

3. Trial

The trial of a capital case is singular in several respects. By statute, no person who entertains “such conscientious opinion” as would preclude him from finding the defendant guilty can serve as a juror in the capital case (ORS 135.220 [7]). One effect is to exclude systematically those who oppose capital punishment. For
example, 253,434 persons voted for abolition in 1958, all of whom probably could be challenged for bias on that ground alone. The Oregon Supreme Court, however, has held that such exclusion of otherwise qualified jurors does not deprive the defendant of his constitutional right to trial by an impartial jury. State v. Leland (1951) 190 Or 598. Another effect is that the jury is likely to include a disproportionate number of persons who entertain strong opinions in favor of capital punishment, to the disadvantage of the defendant.

Furthermore, jurors have the power to recommend punishment, as well as determine guilt or innocence. Thus, they can hear evidence relating to the defendant's character, the aggravated nature of the criminal act and other facts which are extraneous to the crime itself. A very real danger is that they might fail to distinguish their dual functions, or misapply the evidence relating to one issue in determining the other, or resolve only one issue without considering the other. The latest version of the Model Penal Code includes a proposal that the sentence for murder be determined at a separate proceeding subsequent to the conviction. (The American Law Institute, Model Penal Code, Proposed Official Draft, May 4, 1952, S. 210.6).

Because of the widespread news coverage which attends most murder trials, it is also likely that jurors will have some knowledge, however incomplete, of the facts of the case and will have secretly formed an opinion. While abolition of the death penalty probably would not materially affect the amount of news coverage or the interest of the general public in the trial of a murder case, it would eliminate the possibility of having the fate of a human life determined by such extra-legal circumstances.

4. Relief from Conviction

The fact that post-conviction procedures are so prolonged, e.g. Caryl Chessman, suggests that the individuals who hear the petitions are reluctant to hasten the execution. Resulting delay can be justified as the price of a conscientious system of justice, but the widespread impression that justice is slow and can be thwarted by “sharp” tactics undermines the public respect so vital to the functioning of that system. If the death sentence were abolished, the use of such tactics probably would diminish and certainly would receive less publicity.

Because of his power of executive clemency, the governor exemplifies both the strength and weakness of the Oregon system: He can save an innocent man after all other remedies fail, but he can also let political considerations or personal opinions about capital punishment dictate his decision. At least one Oregon governor never permitted a man to be executed, and others never granted a pardon from execution. Such decisions are not subject to review, except by prosecution of the governor for incompetency or malfeasance (Amend Art VII, S 6, Or Const) or by the expression of public will at the polls. Ex parte Holmes (1958) 215 Or 121. Furthermore, the governor's handling of pardons can affect the attitude of the many people who become involved in a capital case, perhaps to the detriment of the accused or the state.

5. Summary

As shown above, the presence of capital punishment does cause distortions in the administration of justice which are absent in non-capital cases. While it is likewise true that legal safeguards are fully available to a defendant accused of a capital crime, and that recent Oregon practice has been to encourage the use of those safeguards to the utmost degree, the distortions could be reduced by abolition of the death penalty.

D. Discriminatory Application of Capital Punishment

Abolitionists claim that the death penalty is applied unevenly. They point to the fact that a small number of those who commit capital crimes are executed, and that with rare exceptions those who are executed are male, poor, mentally defective (but not “legally insane”), of low social status, or are members of a minority group. A high proportion is Negro. Analysis of the more than 3,000
U. S. cases in which the death penalty was exacted between 1930 and 1959 discloses that more than half involved Negroes, although Negroes constitute about ten per cent of the total population.

Opponents of abolition argue that if capital punishment is unevenly applied, the better solution would be to improve the system to eliminate the inequities; that the same inequities exist with regard to lesser crimes; and that, if true, the fact that a disproportionate number of Negroes is executed merely confirms that Negroes on the whole commit a disproportionate amount of the total crimes committed in the entire country.

Because of the small number of executions in Oregon, it is difficult to show that discrimination exists to any degree of statistical certainty. Nevertheless, of the last 19 people executed in Oregon, three (16 per cent) were Negroes, whereas Negroes constitute about one per cent of the state's population. A commission appointed by Governor Meier to investigate the case of Theodore Jordan concluded: "We think that there was some prejudice against the defendant because he is a Negro and that this had a tendency to prevent a fair and impartial prosecution and consideration of this case."

Further, all of the last six persons executed in Oregon have been represented by court-appointed counsel. This Committee does not intend to cast any reflection on any attorney or judge in this state regarding the way counsel are chosen for indigent defendants or fulfill their duties. In Multnomah County, at least, attorneys of exceptionally high caliber and experience have been selected for capital cases. No matter how skillful these attorneys may be, however, they are often less experienced in the practice of criminal law than the full-time prosecuting attorneys and are inevitably handicapped by lack of funds in conducting a thorough investigation and defense. (At present, a court-appointed attorney in a capital case in Oregon is allowed no more than $225.00 plus "reasonable" expenses, compared to the more extensive funds at the disposal of the prosecution). The recent establishment of the office of Public Defender for post-conviction appeals is certainly a step in the right direction of equalizing the experience and resources on both sides.

Governor Sprague, in his letter to the Committee, stated:
"I favor abolishing the death penalty, not because of a conviction as to the sanctity of human life [but] because of a conviction that its application is inequitable. The poor and the friendless are usually the ones who are executed, not the rich and well born."

Occasionally persons involved in the same offense with an apparent similarity in degree of guilt are given disparate sentences. In the John Burns-Dan Casey case in Multnomah County in 1923, the defendants were jointly indicted for a murder which occurred during a robbery. The prosecution contended that the bullet from Burns' gun did the killing. Burns was acquitted but Casey was convicted and executed as the accomplice of a man who was declared by a jury not guilty of the murder.

For a variety of reasons, only a small portion of all homicides are ever punished by death in the United States. There is no reason to believe that only the most dangerous murderers are punished in this way. James V. Bennett, recently retired Director of the U. S. Bureau of Prisons said, in 1961:

"Whether an offender is executed depends not so much on the nature of his crime, but on the jurisdiction in which he is indicted and the jury that convicted him."

E. Possibility of Error

Advocates of capital punishment consider the risk of executing an innocent man a necessary item of social cost. They point to legal safeguards provided by society to eliminate possible error. Should an error be discovered, it can result in measures designed to avoid repetition and thereby serve society.
The trial by jury, the rules of evidence, the alternative penalty (life imprisonment) to capital punishment, and the power of the governor to investigate cases, commute sentences, and pardon prisoners, all serve as protections for the accused and convicted persons. In addition, Oregon has made statutory changes for the protection of the convicted by having all death sentences automatically reviewed by the State Supreme Court (1955) and by making provision for a Public Defender (1963).

The fact remains, however, that errors are possible. The fallibility of human judgment, the chance of erroneous identification, and the possibility of false or concealed evidence create a risk of convicting an innocent person. Even though delayed, the opportunity to clear and release a wrongfully convicted person is always possible with life imprisonment. After execution, there is usually little interest in continuing the effort to clear the condemned. Ironically, in the attempt to clear himself, the condemned may need the aid of the same prosecuting authorities who worked for his conviction.

It has not been shown that the people of Oregon have ever executed an innocent man, but Rhode Island and Maine each abolished capital punishment after doing so. At least one innocent person has been sentenced to death in Oregon. John H. Pender was saved from execution by Governor West, who commuted the death sentence following the 1914 abolitionist vote. Later, after an investigation, another man confessed to the crime and Pender was pardoned. Reversals of capital convictions by the Oregon Supreme Court have not always been followed by a new conviction of murder. Jasper Jennings’ conviction was reversed and a new trial was ordered. His case was dismissed.

Your Committee received some opinion that several cases have occurred where possible error was not corrected.

Your Committee agrees that there is an ever-present possibility of a mistake. The execution of an innocent man is irrevocable; life imprisonment of an innocent man offers some possibility of restitution. Your Committee prefers the latter.

V. ARGUMENTS DEALING WITH SPECIFIC LEGISLATION

A. Partial Abolition

The proposed constitutional amendment and ancillary legislation would completely abolish capital punishment. However, some persons favored retaining the death penalty in two situations: (1) the commission of a second murder after once having been convicted of first or second degree murder, and (2) the killing of a police officer or prison official while performing his official duties. Warden C. T. Gladden, in supporting this position, said:

“In retaining capital punishment for individuals who commit murder after having once been convicted of first or second degree murder, I have in mind the protection of prison guards and other prisoners. We do not have sufficient statistics to prove the effectiveness of the death penalty as a deterrent to killing people engaged in prison and police work; therefore, due to a lack of evidence to the contrary, the doubts should be resolved in favor of those individuals who are required to assume particular risk of life. It also seems logical to assume that if statistical evidence were available which plainly indicated that capital punishment in no way enhanced the security of these people, there would be little chance of changing their attitude or the attitude of the public.”

Essentially similar exceptions were made by others for varying reasons: It would protect one who is exposed to greater danger than the general public and would therefore assist in recruitment of police and prison officers; it would reinforce prison discipline, as the inmates of a prison being more likely to be impressed with the certainty of punishment for a “cop-killer” than the average citizen; it would dispose of menaces to prison discipline.
Because of these opinions, the views of six prison wardens in abolitionist states were obtained. All favored abolition generally, although two of the six preferred exceptions to complete abolition. Five of the six wardens stated that the absence of capital punishment had no effect on prison control, police administration, or the morale and recruitment of police and prison officials.

The sixth warden declined to express an opinion because of the absence of capital punishment in his state for 75 years.

Governor Hatfield and ex-Governors Hall, Holmes, Smith and Sprague all replied to your committee's request for their views. Only Governor Elmo Smith agreed with the position of Warden Gladden as to limited retention of capital punishment. Governor Hall favors complete retention. Governor Hatfield and ex-Governors Holmes and Sprague favor abolition of the death penalty completely.

Your Committee recognizes that the replies of the wardens from abolitionist states may contain an element of bias, since there is generally a tendency for people to defend the system of which they are a part. Certainly, if they had any strong objections, they would probably have not chosen to remain in their present positions. However, your Committee was impressed by the almost unanimous opinion of these wardens that absence of capital punishment presented no problems of police or prison administration. There was, in fact, some evidence presented that capital punishment created some problems of prison control, due to the emotional atmosphere created when executions are imminent.

B. Effect on Parole Administration

A more valid criticism of the measure and accompanying legislation is directed at its effects upon parole administration. At present, both first and second degree murderers must serve a minimum of seven years before they can be considered for parole. Usually when a paroled first or second degree murderer has satisfactorily performed the obligations of parole for a ten-year period, the State Board of Parole and Probation issues him a final certificate of discharge from parole. The proposed legislation increases the minimum period which must be served in the penitentiary by first degree murderers from seven to ten years, and prohibits the issuance of a final order of discharge from parole for those convicted of first degree murder. This is inconsistent with modern penology and is, in fact, an unwarranted implied criticism of our present parole procedures. The Committee also believes these changes are not in harmony with Article I, Section 15 of the Oregon Constitution as interpreted in 1963 by the Supreme Court of Oregon in Tuel v. Gladden (previously cited). The Court said:

"It has been suggested that life confinement is not inconsistent with reformation, i.e., the person might be reformed, but, nevertheless, his confinement would be continued. That view, we believe, is contrary to an implied essential corollary of reformation, that permanent reformation should be followed by release from confinement."

Warden Gladden, in explaining to the Committee why murderers are excellent parole risks, pointed out that murderers frequently are not "criminal types" but individuals who have been faced with an extreme emotional situation which is not likely to recur. In Oregon, the percentage of murderers whose parole was revoked is below the average for all parolees and significantly below the rate of revocation of parole for those paroled for robbery, larceny, forgery, and auto theft. Of 187 cases of first and second degree murderers released since 1939, only seven paroles were revoked because of the commission of a new crime, none of which was another murder. Some prison and parole officials stated that excessive confinement of a person may "ruin" a prisoner who otherwise might be rehabilitated, as he becomes unable to readjust to the outside world. They further stated that rehabilitation, rather than retribution, should be the governing consideration and that the parole board, rather than the legislature, is better able to determine when an individual has been rehabilitated.
Although the Legislature apparently wished to make a distinction between the parole eligibility of first and second degree murderers, in practice the distinction is more apparent than real. A review of some 80 first and second degree Oregon murder cases showed that the nature of the act does not necessarily determine whether the defendant is convicted of first or second degree murder. Some second degree convictions might well fit the statutory definition of first degree murder, and, to a lesser extent, vice versa. Nor is there any discernible difference in the parole experience with first and second degree murderers. Letters from the wardens of other states informed us that they considered murderers very good parole risks.

The Oregon Governors also had some observations on the parole changes.

Governor Smith wrote:

"Basically, I prefer an indeterminate prison sentence with a minimum rather than a fixed term. I believe first degree murderers should be eligible for parole. Each individual should be evaluated on his own rehabilitation record."

Governor Holmes stated:

"As far as extending from 7 to 10 years the minimum period required before a first degree murderer becomes eligible for parole, I would suggest that while it might be justified as a maneuver to win more votes for repeal, actually if such an offender could be rehabilitated ... he probably [could] achieve such rehabilitation in seven years. As far as never being discharged from parole ... a man is either rehabilitated or he isn't, and I feel this should govern the length of supervision."

Governor Sprague stated:

"I do not believe the special provisions in the proposed constitutional amendment are of major importance,—extension of the minimum period for imprisonment to ten years and barring first degree murderers from discharge from parole. As long as the governor holds the power to pardon or to commute a sentence, these actions may be lifted. And someone should always have that power, to correct grievous injustice or recognize marked rehabilitation . . ."

"Under our parole system, it is possible to evaluate the cases individually, to observe changes, if any, under confinement. On the basis of the whole record, the parole board may make recommendations to the governor if release of a prisoner is beyond its power."

Very few first degree murderers have in the past been paroled by the Board in less than ten years, so the proposed change would presumably affect only a small number. In addition, the degree of supervision decreases as the individual adjusts to society, so the degree of supervision required after ten years would probably be minimal. Finally, the Parole Board may, if individual circumstances warrant, make an appropriate recommendation for pardon to the governor. Therefore, while your Committee concludes that the proposed changes affecting parole are wrong in principle, it does not believe that as a practical matter they constitute a substantial basis for objection to the proposed measure.

C. Change in Penalty for Second Degree Murder

The legislation which will be effective if the ballot measure passes provides: "the maximum penalty for murder in the second degree is changed from life imprisonment to 25 years". As a result, a second degree murderer can be confined for no more than 25 years, and possibly, with the allowance of statutory "good time", might be released in less than 17 years, regardless of his prospects for rehabilitation. The Legislature presumably thought that if the penalty for first degree murder were changed to life, then there should be some change in the penalty for second degree murder to differentiate the degree of guilt.
It has been noted that, in practice, the character of the crime does not necessarily determine whether a first or second degree conviction is obtained. With abolition there might be a closer correlation between the nature of the crime and the degree of murder for which the accused is convicted. However, there is no necessary relationship between a murderer's sentence (first or second degree) and his capacity at a later date to be rehabilitated and paroled.

As previously noted, many serving first degree sentences have been paroled in a shorter time than those serving second degree convictions. The controlling consideration is whether the Parole Board considers them good prospects for rehabilitation. Some of the longest terms have been served by second degree cases—49 years in one case, and over 35 years in six cases. Indeed, 17 have served terms in excess of the proposed 25-year maximum sentence, and 36 have served in excess of 17 years—the approximate time that would be served under the proposed 25-year sentence after the allowance for “good time”. Certainly a number presently serving second degree life sentences will never be released because the Parole Board would not consider release of the prisoners compatible with the welfare of society.

Your Committee views this provision with concern. It believes that it will mean, unless remedied by a subsequent legislature, the mandatory return of un-rehabilitated and possibly dangerous men to society. If the ballot measure passes, there will be an urgent need to correct this defect. However, the Committee feels the abolition of the death penalty is the major issue. Since a subsequent legislature can pass corrective legislation, your Committee does not consider this defect sufficient cause to oppose the proposed amendment.

D. Statutory or Constitutional Provision

In the future, the power to change the penalty for first degree murder would be in the Legislature. Included is the power to restore the death penalty. Some argue that the enactment or repeal of the death penalty is too serious a matter to leave to the “whims” of the legislators and therefore should be embodied in the Constitution.

Others argue that criminal laws and procedures are within the exclusive domain of the Legislature and that inclusion of any constitutional provision inhibits the establishment of uniform criminal laws.

The Committee concluded that the death penalty would be little more susceptible to enactment or repeal in either instance, because change is likely to come about through public demand.

VI. GENERAL SUMMARY

In evaluating the arguments for and against capital punishment, your Committee finds that capital punishment tends to distort and create disrespect for normal legal procedure; that capital punishment is not applied equally to all classes of society; and that the possibility of executing an innocent person exists. In the light of these undesirable results, capital punishment can be justified only if a clear showing is made that it provides added protection to society as a deterrent to murder. No clear showing has been made. Therefore, your Committee believes capital punishment should be abolished.

Your Committee expresses its disapproval of the accompanying changes in the ancillary laws affecting parole and the penalty for second degree murder. These defects can, and should be corrected by the legislature. While these defects are not unimportant, your Committee regards them as subordinate to the dominant issue of capital punishment.
VII. RECOMMENDATION

Your Committee recommends that the City Club go on record in favor of passage of this Constitutional amendment and urges a "yes" vote on State Ballot Measure No. 1.

Respectfully submitted,

Charles H. Heintz
Lloyd T. Keefe
E. Kimbark MacColl
Donald McKinlev, M.D.
Peter A. Plumridge
Leigh D. Stephenson
James G. Gruetter, Chairman

Approved October 2, 1964 by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 7, 1964 and ordered printed and submitted to the membership for action.

BIBLIOGRAPHY

American Law Institute, “The Problem of Punishing Homicide” (1962)
Bedau, Hugo Adam, “The Death Penalty in America”, Doubleday-Anchor (1964)
California, Assembly Judiciary Committee, Subcommittee on Capital Punishment, “Report... Pertaining to the Problems of the Death Penalty and Its Administration in California” (1957)
California, Senate Judiciary Committee, “Report and Testimony... on a proposed bill/ to Abolish the Death Penalty” (1960)
Danielson, George, “Facts and Figures Concerning Executions in California, 1938-1962”.
Hoover, J. Edgar, Official Statements, June 1, 1961 and June 1, 1960; press release April 5, 1960
Kendell, Nevin E., “The Case Against the Death Penalty”, Presbyterian Life (Nov. 1957)
League of Women Voters of Oregon, “Material compiled... on the Capital Punishment Bill... on Nov. 3, 1964 ballot”
Lehn-Stevas, Norman, “The Right to Life”, Holt (1964?)
Maryland Legislative Council Committee, “Report... on Capital Punishment” (1962)
Massachusetts, Special Commission... for... Investigating and Studying the Abolition of the Death Penalty, “Report and Recommendations” (1958)
Mattick, Hans W., "The Unexamined Death", John Howard Association (1963)
McClellan, Grant S., "Capital Punishment", Wibon (1961)
Ohio, Legislative Service Commission, "Capital Punishment", Staff Research Report No. 46 (1961)
Oregon Prison Association, "Why the Oregon Prison Association is Opposed to Capital Punishment"
Oregon State Bar, Report of Committee on Constitutional Revision (March 1963)
Oregon State Board of Parole and Probation, Report for period July 1, 1960 to June 30, 1962
Oregon Voter's Pamphlet, General Election, Nov. 4, 1958
Oregonian, July 11, 1964, "Oregon Churchleaders Seeking Statute to End Death Penalty"
Prettyman, Barrett, "Death in the Supreme Court", Harcourt (1961)
Royal (Great Britain) Commission on Capital Punishment Report, 1949-1953
United Nations, Economic and Social Council, Department of Economic and Social Affairs, "Capital Punishment" (1962)
REPORT
ON
BONDS FOR REBUILDING AUDITORIUM
(Municipal Measure No. 52)

Purpose: Measure authorizing issuance of not to exceed $3,925,000 in serial
genral obligation bonds for rebuilding and modernizing the auditorium.

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Your Committee was appointed to study and report on the City of Portland
Measure No. 52, placed on the ballot by action of the City Council on July 29,
1964, by a resolution reading as follows:

A Measure

A measure authorizing issuance of serial general obligation bonds totaling
not more than $3,925,000 for Auditorium rebuilding and modernization.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF PORTLAND,
OREGON:

Section 1. Pursuant to Chapter VII, Article 2 of the Portland City Charter,
the City Council is authorized to issue serial bonds in a total sum not exceeding
$3,925,000 with initial maturity date three years from the date of issue and final
maturity date twelve years from the date of issue. Such bonds shall be general
obligations of the city, but any net revenues from the public auditorium after
expenses, including but not limited to maintenance and repair, may be used for
payment of interest or principal of said bonds outstanding. Said bonds shall be
known as “Auditorium Modernization Bonds.” The proceeds therefrom shall be
used for rebuilding, furnishing, equipping and modernizing the Public Auditorium
as the Council may find necessary or appropriate for a theater-concert, multi-use
auditorium.

This November general election ballot measure is identical in wording to
Municipal Measure No. 53 which appeared on the May primary city ballot but
which was not approved by the voters in that election.

II. SCOPE OF COMMITTEE WORK

In its study, your Committee carefully reviewed and re-evaluated the City
Club’s favorable report on Municipal Measure No. 53 (pp. 919 ff. City Club
Bulletin), adopted May 1, 1964, by the membership.

In addition to the individual or joint interviews carried out in conjunction
with the May report, your Committee or its individual members, interviewed
or re-interviewed the following persons:

Mr. Fred M. Buchwalter, Chairman, pro tempore Citizens’ Committee for a
Performing Arts Center;
Mr. Howard L. Glazer, Architect;
Dr. Maure L. Goldschrnidt, member, Citizens’ Committee for a Performing Arts
Center;
Mr. John Kenward, Executive Director, Portland Development Commission;
Mr. Edward H. Look, Chairman, Citizens’ Auditorium Committee;
Mr. Douglas Lynch, former Chairman, Portland Art Commission.
III. BACKGROUND

The City Club report on the Auditorium bonds measure on the primary ballot set forth in detail the history of efforts to construct and later renovate Portland's Civic Auditorium as follows:

"Around 1900, the citizens of Portland recognized the community necessity of an opera house, and, according to records, took ten years to decide its location. Finally, a bond issue for $600,000 to construct one was passed on June 5, 1911. After the election, the Auditorium Bureau commissioners decided to include plans for a horse arena within the 1500-seat opera house. The total building was intended to be 200 by 400 feet, and the inclusion of the horse arena required an additional $200,000. At the subsequent November election in 1911 the issue for additional bonds was denied approval.

"It was not until 1915 that the present site for the auditorium was actually chosen, and on July 4, 1917 the building was finally dedicated. Some items originally in the plans were not completed. However, the structure as finally built shows excellent workmanship even today. No attempt was made to supply the omissions from the original plans until 1950 when a $150,000 bond issue for remodeling was submitted to the voters and carried.* The bond issue was expected to provide new seats, redecorating, improve the public address system, the stage, heating, ventilating, plumbing, fire escapes and roofs as well as install some other miscellaneous equipment. However, the actual improvements possible with that amount of funds included putting in new upholstered seats, renovating the proscenium arch and making some improvements in the acoustics. Further plans for remodeling the auditorium were submitted to the voters in 1960 and again in 1962 as part of tax base increase proposals,(2) but both tax base proposals were rejected by the voters. Consequently, only minor improvements have been made since the original construction in 1917.

"The present seating capacity of the auditorium is 4178. Of this total, 2078 seats have oblique, limited views of the stage, being located either in the wings off the orchestra level, or in the side portions of the first and second balconies which do not face the stage. The main floor wing seats are not permanent and are extremely uncomfortable wooden folding chairs on antiquated wooden risers. The basement below the orchestra level is available for exhibits and houses a kitchen, the equipment for which dates back to 1914.

"Space on the second floor is occupied by the Oregon Historical Society and the Portland Civil Service Commission.

"The building, bounded by 2nd and 3rd Avenues and Clay and Market Streets, is adjacent to the South Auditorium Urban Renewal Area.

"In 1963, at the request of Mayor Schrunk, the Portland Art Commission made an inventory of Portland's needs for an adequate theater and concert facility. From this study came the formation of a citizens' committee, charged with the responsibility of investigating and solving these needs. The Federal Government granted $100,000 for the surveying and planning and for the retaining of architects and consultants . . . ."
The investigation conducted last spring by the Citizens' Auditorium Committee and the consultants resulted in Municipal Ballot Measure No. 53 of May 1964, which was defeated at the polls by a slim margin. (Yes: 68,566; No: 70,779)

In August, 1964, the Citizens' Auditorium Committee then requested the City Council to resubmit an identical Auditorium Remodeling measure to the voters in the general election in November, 1964. The City Council approval of this request resulted in Ballot Measure No. 52.

**IV. WHAT THE MEASURE WOULD DO**

The November measure would accomplish exactly what the May measure would have, and these details were set forth in the City Club May report substantially as follows:

"The proposed measure would authorize the City Council to issue serial bonds in a total sum not exceeding $3,925,000 with initial maturity date three years from the date of issue and final maturity date twelve years from date of issue. Such bonds would be general obligation bonds of the City, with any net revenues from the public auditorium to be used for the payment of interest and principal of the bonds. The bond proceeds would be used for rebuilding, refurnishing and re-equipping the present auditorium into a modern and adequate theater and concert facility. The entire interior or the proposed rebuilt auditorium will be completely refinished. The outside surface will be reinforced and beautified by resurfacing.

"The proposed renovation will meet the following criticisms which have been leveled against the present facility: No air-conditioning; antiquated and inadequate electrical wiring and heating systems; lobby too small; not enough drinking fountains, refreshment centers, rest rooms, toilets and powder rooms; box office too far from curb; stage not deep enough nor wide enough for many types of shows; stage too narrow for good viewing and difficult to see from orchestra seating section; too many side seats downstairs and in balconies with obstructed view of stage; balcony slope too steep and rows too close together for safe or comfortable seating; orchestra pit too small; inadequate mechanical stage facilities; main entrance stairs and balcony stairs too hazardous."

In addition, plans would provide for more and improved dressing rooms and two completely soundproofed rehearsal rooms. The practically unusable basement would be modernized for greater and more efficient use.

The total result would be a modern, useful building in a strategic area of the City. Some of the important comparisons between the proposed structure and the existing facility are:

<table>
<thead>
<tr>
<th></th>
<th>Present</th>
<th>Proposed</th>
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<tbody>
<tr>
<td>Number of seats</td>
<td>4178 (2073 with limited visibility)</td>
<td>3002 (all with good visibility)</td>
</tr>
<tr>
<td>Orchestra pit: Number of seats</td>
<td>45</td>
<td>85</td>
</tr>
<tr>
<td>Number of refreshment centers</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>Width of stage (feet)</td>
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<td>107</td>
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<tr>
<td>Lobby &amp; foyer area (square feet)</td>
<td>3945</td>
<td>23,330</td>
</tr>
<tr>
<td>Restroom areas (square feet)</td>
<td>2085</td>
<td>5955</td>
</tr>
</tbody>
</table>

**V. ARGUMENTS FOR THE MEASURE**

The following arguments which were advanced in favor of the May measure are equally applicable to the November measure:

1. The present auditorium is almost fifty years old. It is uncomfortable and old-fashioned, and, if not rebuilt, will require expensive maintenance to preserve even its present condition. The present physically deteriorated building in the next few years will require the following minimum maintenance expenditures:
$18,500 in the next year, including
  $2,000 for painting of fire escapes;
  2,500 for painting in south wing;
  6,500 for replacement of stage floorings, and
  7,500 for new roof;

$35,000 in the next two years for replacement of entrance doors;
$150,000 to $175,000 within the next five to six years for new seats.

All of the above expenses would be avoided by the proposed measure and
would otherwise be wasted on an outmoded building.

2. The new facility will provide 3002 seats with excellent view of the stage
as compared with 2100 seats which offer good viewing in the present building.
Although a total of 4178 persons can be seated now, 2078 of these have only
limited visibility because they do not face the stage.

3. An increased use of the auditorium with resulting revenue increase
would be realized by longer runs of attractions and a more extensive utilization
of presently outmoded facilities. Some productions that presently by-pass Portland
might be lured here by adequate facilities.

4. It would be far less expensive to modernize the present auditorium than
to construct a new building of comparable size and efficiency.

5. As one factor in choosing a location, new industries examine existing
cultural opportunties and facilities.

6. The growing convention business in Portland requires a pleasant civic
entertainment center.

7. The present Auditorium site is conveniently accessible to all its users, as
evidenced by its location in the heart of a triangle bordered by Harbor Drive,
Burnside Street, and the new Foothills Freeway.

8. The Auditorium is a key edifice in the South Auditorium Urban Renewal
extension area. The Auditorium, unimproved and in its present state, would
have psychologically depressing and, to some degree, a deleterious economic effect
upon the entire area. A rebuilt auditorium, on the other hand, is essential to the
urban renewal extension area and will have great influence on future plans and
developments.

VI. ARGUMENTS AGAINST THE MEASURE

The following arguments have been advanced against the measure:

1. The proposed measure is a compromise. It would be better for Portland
to do nothing now, and initiate a thorough professional study of the City's needs
for facilities for performing arts and other civic and cultural uses.

2. The proposed multi-purpose rebuilt facility would satisfy the requirements
of only a limited number of users. Portland should create a civic performing arts
complex, providing separate facilities fulfilling the various needs with perhaps
three halls: a public auditorium/convention hall; a symphony hall/opera house,
and a theater.

3. One multi-purpose facility in frequent or almost constant use would not
permit adequate on-stage rehearsals for larger organizations such as the symphony
or large choral groups.

4. There is no guarantee of adequate parking facilities.

5. There is at present no adequate planned solution for pedestrian and traffic
flow and circulation in the area immediately surrounding the Auditorium.

6. $4,000,000 is too much to spend for the rebuilding of an old facility.
It would be better to spend $1,000,000 or less for the remodeling of the interior,
thus creating a hall of lesser capacity.

7. The proposed exterior architectural design is not up to the standards
expected of a civic and cultural facility of this scope and size.
VII. DISCUSSION

After a thorough review of its May findings and the objections to the ballot measure expressed by a citizens’ group which organized following publication of the City Club May 1964 report, your Committee continues to favor the measure as proposed, after consideration of the following factors:

It would appear that the existing auditorium facility is performing a necessary and valued civic function in the community’s life for its many and varied users. Although some architects view the building as a reasonable example of turn-of-the-century neoclassic design, the building is archaic and has shown its age for some time. This obsolescence has been recognized by the fact that in 1960 and 1962, proposed measures for several capital improvements, including Auditorium renovating, were put on the ballot. Both “package deals” were defeated by the voters.

The existing facility is paid for and seems to have served the community well. Any facility, whether new, old or modernized, whether large or small, will require proper maintenance to protect the capital investment. However, for such a long-obsolete building, the maintenance—both of preventive and emergency nature—becomes increasingly costly to the point of being an unnecessarily heavy burden on the taxpayer.

It is completely reasonable to expect that improved facilities will attract more productions to Portland. The resultant increase of the gross revenue of the building will possibly offset not only operating costs and maintenance, and help to retire the bonds, but it may also balance out those productions which are now permitted free use of the public facility, such as graduation exercises, Thanksgiving services, Lincoln Day ceremonies, etc.

Your Committee recognizes the uncertainty in the community regarding the needs for facilities as a site for concerts, stage productions, other mass entertainment and civic functions. The Auditorium remodeling measure forces upon the community the necessity of a decision:

1. Should the community continue to use an obsolete, uncomfortable, and inadequate fifty-year-old building requiring increased costs of maintenance and operation?
2. Should the community confine itself to the present structure and remodel the Auditorium into a facility of much less capacity and at a lower cost than proposed in the present measure?
3. Should the community pass the present measure and rebuild and modernize the Auditorium as proposed, for approximately $4 million?
4. Should the community “make do” with the present Auditorium and immediately institute a study of the community’s needs for facilities for performing arts, symphony and other cultural and civic uses, to determine location and nature of future facilities and proceed with design, financing and construction?
5. Should the community adopt the proposed ballot measure as the initial phase of the creation of a civic and performing arts center?

Unfortunately, these alternatives are not mutually exclusive. Yet, the voter has no choice but to vote “yes” or “no”. Therefore, your Committee was compelled to view the measure giving full consideration to this factor.

To your Committee there is no question of the urgent need in this community for an auditorium for concerts, stage productions, other mass entertainment and civic uses. This view was confirmed unanimously by officials and individuals questioned.

However, your Committee and some of the individuals interviewed are convinced that the community would have been even better served had the present proposal been presented as a part of an over-all, long-range plan for the development of cultural and civic facilities in Portland.
Continued use of the Auditorium in its present inadequate state confronts the citizens of our community with the prospect of ever-diminishing efficiency and comfort and an increasing rate of maintenance and repair expenditures.

The suggestion of remodeling the interior of the present Auditorium, without making major structural changes, into a theater-concert hall of whatever capacity might be contained by such a plan—perhaps 1500 to 2000 seats—at an estimated cost of approximately $800,000 to $1,000,000, is not considered by your Committee to be realistic.

Even without the necessity of alterations to the exterior shell, interior structural changes would be inevitable and would boost the cost far beyond the above estimate.

Your Committee is convinced that the Portland community needs improved auditorium facilities now, and that remodeling the present Auditorium in the fashion proposed in the present measure is entirely feasible. It is also your Committee's strong opinion that Portland's needs are not adequately served by this single facility and that the rebuilding of the Auditorium should be considered as an initial phase for the establishment of further cultural and civic facilities. To this end, the Portland Development Commission has responded by showing cultural center property in its plans in the area immediately adjacent to the Auditorium for possible future development.

By all estimates the present Auditorium site must be considered as nearly ideal as might be found, located within a rapidly improving area, convenient to Portland's core, and by traffic arteries to all portions of the metropolitan area. Street closures resulting from urban renewal activities and completion of the Foothills Freeway will alleviate much traffic congestion, yet not inhibit access to the Auditorium itself. The proposed malls, pedestrian tunnels and motor vehicle cul-de-sacs will further ease access to the Auditorium.

Adequate parking in the immediate vicinity of the Auditorium appears reasonably assured with a minimum total of 1050 spaces, a figure experts consider sufficient for a 3000-seat house.

The architectural solution of the interior of the rebuilt facility has met with general approval. However, the proposed exterior design and finish of the rebuilt Auditorium has been criticized widely, a problem which your Committee urgently recommends for further consideration. Passage of this measure does not in any way commit the City to the proposed exterior design. Your Committee has received assurance that the plans of the proposed exterior are preliminary and can and will be reviewed.

Your Committee is convinced that continued maintenance and repair expenditures for the present building are a wasteful drain of taxpayer dollars in a losing battle against further obsolescence. Yet the building is structurally sound and rebuilding does appear feasible, particularly when compared with the cost of a similar new facility.

Your Committee is concerned that adequate on-stage rehearsal time is not available to the Portland Symphony or other large performing organizations. However, until such time as the Symphony achieves full-time status, such facilities could not be regularly available under any circumstances. When the Symphony does reach full-time status, on-stage rehearsals in the Auditorium would generally be held during the day.

Your Committee is of the opinion that the majority of the community's present needs would be met by the proposed plan. However, it is recognized that certain drawbacks are inherent in a multi-purpose facility of this kind, and that these deficiencies ultimately must be met through the creation of additional structures of a more specialized nature—such as a 900 to 1500 seat theater—as needs and support crystallize. Thus, the criticisms attacking alleged inadequacies of the multi-purpose facility might be considered temporary at worst. Planned seating capacity, especially in view of the fact that "all seats will be good seats", should be more than adequate for the majority of the users.
One main criticism centers around the fact that the proposed renovated hall does not provide a proper setting for theatrical productions. The intimacy required for legitimate theatre cannot exist in as large an auditorium as is planned. Your Committee urgently recommends that Portland's needs be met in this direction after the proper study has taken place. We do not wish to leave the impression in any way that the renovated Auditorium will provide a proper setting for legitimate theater.

Comparisons perhaps might be helpful for adequate evaluation. As cited in the May report, some years ago Seattle faced the same problem as Portland and solved it by utilizing the shell of the then existing civic auditorium to create a fine opera house, seating 3007 and costing $3,200,000. Seattle's modernization project required less expensive remodeling and there were also several outright contributions which are not reflected in the building cost; hence, their rebuilding cost was less than that estimated for Portland. The seating capacity of the proposed Portland Auditorium will be 3002 seats, compared with Seattle's 3007.

To your Committee it seems there is no great problem involving the financing of the proposed Auditorium modernization. The City of Portland has excellent credit for such bond financing. These general obligation bonds would be bought by many underwriters on a competitive basis, with interest cost probably not exceeding 3 3/4 per cent, since they are tax-free to the investors. The addition to the individual taxpayer's burden would average, over the twelve years, approximately 66 cents per $100 of present taxes.

VIII. CONCLUSIONS

Your Committee is convinced that the community requires improved auditorium facilities, that the quality of the present Auditorium structure is sound enough to make the proposed modernization feasible, that the solution presented is a good one, and that the cost to the taxpayer is modest.

Your Committee is also convinced of the importance of dedicating land adjacent to the Auditorium for future development of additional facilities and of the necessity for re-evaluating the plans for exterior treatment and design of the proposed remodeled Auditorium.

Your Committee believes that the Auditorium rebuilding measure deserves full support of the electorate.

IX. RECOMMENDATION

Your Committee unanimously recommends that the City Club favor the proposal to modernize the Civic Auditorium and urges a vote of "yes" on Ballot Measure No. 52.

Respectfully submitted,

Daniel J. Cohn
Gordon L. Henderson
Dr. Walton Manning
Charles S. Politz
Theodore E. Reich
Rabbi Emanuel Rose
Lamar Tooze, Jr.
Roland A. Haertl, Chairman

Approved October 5, 1964 by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 7, 1964 and ordered printed and submitted to the membership for action.
REPORT
ON

REVISING FIRE-POLICE
DISABILITY-RETIREMENT SYSTEM
(Municipal Measure No. 51)

Charter amendment revising Fire and Police Disability and Retirement System to: clarify certain provisions—remove ambiguities and inconsistencies; provide for increase of members' contributions and specific pension payments to members, their widows and dependent minor children without members' option; define procedural requirements; effective January 1, 1965.

To the Board of Governors,
The City Club of Portland:

I. ASSIGNMENT

Your Committee has been directed to study and report on Municipal Ballot Measure No. 51 amending Article I of Chapter V of the Charter of the City of Portland relating to the Fire and Police Disability, and Retirement and Death Benefit Plan.

Your Committee's assignment did not include an evaluation of the long-existing Fire and Police Disability and Retirement Fund except insofar as the charter is affected by the proposed amendments.

II. SOURCES OF INFORMATION

Your Committee interviewed Mr. Robert Clohessy, Deputy Secretary of the Board of Trustees of the Fire and Police Disability and Retirement Fund; Captain John Pittenger, Police Liaison to the Board; Mr. Ron Usher, Fire Liaison to the Board, and Mr. Richard Unis, Senior Deputy City Attorney and Chairman of the Mayor's Committee on Revision of this Act.

In addition, your Committee referred to four previous City Club reports\(^1\); the report of the Mayor's Committee on Revision; the existing Act; the proposed charter amendment, and to a recent report on the existing charter provision by Oregon Tax Research.\(^2\)


III. BACKGROUND

A Charter Amendment, adopted in 1948, gave the Fire-Police Disability and Retirement Fund its present form: the 1948 amendment unified the Firemen's Relief and Pension Fund of 1913 and the Police Relief and Pension Fund of 1918.

The 1948 Act further provided a continuing tax levy of up to 2½ mills (outside the 6 per cent limitation) in addition to the 3/10 of one mill already imposed. Contributions by members of the plan were continued and there was also established a reserve fund of $500,000 (increased to $750,000 by ballot measure in 1950).

No increase is being made in the present authorized millage levy of 2½ mills. Currently, only 1½ mills is actually levied.

The Fund and the Reserve Fund are administered and its monies invested (within Charter restrictions) by a Board of Trustees which includes: the Mayor, City Treasurer, City Auditor, Chief Engineer of the Fire Bureau, Chief of Police, and three members each from the fire and police bureaus.

Over the past ten years, the Fund has had annual receipts varying from one million to two million dollars, with expenditures of a similar amount. Cash balances at year-ends, in excess of the Reserve Fund, have ranged from a low in 1954-55 of $114,000 to a high in 1961-62 of over one million dollars, averaging about $500,000.

It is not expected that this will produce any increased burden to the taxpayer.

IV. GENERAL DISCUSSION

The proposed Charter Amendment constitutes a complete re-writing of the Act. The revisions are intended to clarify its provisions and strengthen its administration. Some modest changes in benefits are incorporated in the new Act, but it does not make any revolutionary changes either in the benefits or in the financing of the plan. The principal changes include:

1. Elimination of the requirement to elect between a maximum pension or a survivorship pension with a reduced amount. A member would receive the maximum pension to which he is entitled during his lifetime; thereafter, a qualifying widow would be assured of a pension according to a revised Survivor's Annuity table.

2. Increase of funeral benefits from $100 to $200.

3. Increase of member contributions from 6 per cent to 7 per cent of salary to defray the major cost of the above increased benefits. This increase is expected to raise fund income by $100,000 of the $170,000 anticipated cost of increased benefits. The remaining $70,000 is expected to be conserved by the following changes aimed at tightening the allowance of benefits:
   a. Strengthening of the authority of the Administering Board by including, among other things, the right to require medical and psychiatric examinations;
   b. Clarification of disability benefits for members based on "service connected", "occupational" and "non-service connected" injuries, for closer administration;
   c. Clarification of widows' and dependent minor children's benefits from "service connected" and "occupational" death;
   d. Clarification of widows' or dependent minor children's benefits upon pre-retirement deaths and "non-service connected" deaths.
4. Making compulsory the retirement of all members at age 64, including Chiefs of Fire and Police. However, incumbent Chiefs may remain in office until August 1, 1968.

5. Preventing substitution for the Chiefs of Police and Fire on the Board of Trustees, thus strengthening and making more consistent the administration; providing that the Mayor, Auditor and Treasurer, when unable to attend Board meetings, can be regularly represented by persons able to serve with some continuity.

6. Conforming salary deductions to monthly pay periods.

The proposed Charter Amendment is the outgrowth of a fourteen-months' study by the Mayor's Committee on Revision. It has been submitted to and approved by the Board of Trustees, the City Council, and members of the Police and Fire Bureaus.

The Revision Committee worked diligently in almost weekly meetings over this extended period to work out the provisions of this modernized program. The Committee was fully representative of the Portland Police Association, Local 456; International Association of Firefighters, Local 43; elected members of the Board of Trustees from both the Bureau of Fire and the Bureau of Police, and the City Attorney's office.

As previously stated, it was not the function of your Committee to evaluate the plan for disability and retirement which has been in existence since 1913 (Fire) and 1918 (Police), and has been generally accepted by the members and officials alike. Suffice it to say that there were compelling reasons for the establishment of such plans at the time they were founded, and these pre-dated any of the other now-existing programs available to such employees. In the beginning there were no reasonable alternatives.

The Committee in its comparative study of existing charter provisions and the changes proposed found that the new provisions would be in the interests of all concerned and that the plan, as it has been developed through the years and as it would be augmented by these currently proposed revisions, compares favorably with Social Security, Workmen's Compensation and the State Public Employees' Retirement System. It also compares favorably with fire and police benefit plans in similar communities. One of the witnesses interviewed stated that in his considered judgment, there were very few plans more favorable as to benefits and over-all costs to members and to the public.

V. CONCLUSIONS

Your Committee applauds the fact that those who will be affected by the proposed changes were thoroughly involved in this major revision.

Your Committee was unable to find any opposition to the proposed amendments to clarify and adjust the administration and operation of the Fund.

Your Committee believes that:

(1) The optional feature of widows' pension benefits is outmoded and has imposed unnecessary hardships on widows. It should be eliminated.

(2) It is perfectly fair that the members should contribute the major part of the additional cost;

(3) The proposed revisions will make possible a fairer and more business-like administration of the plan.

(4) The plan, as revised, compares favorably in both benefits and over-all cost with Workmen's Compensation and Social Security or State Public Employees' Retirement System.

(5) The proposal represents conservative and constructive changes in the present plan and were carefully considered by the Revision Committee.
VI. RECOMMENDATION

Therefore your Committee unanimously recommends that the City Club go on record as favoring passage of this measure and urges a vote of "Yes" on Municipal Measure No. 51.

Respectfully submitted,

Relph Alberger
Craig Kelley
Hjalmar Rathe
Richard Rubinstein
Gordon Beebe, Chairman

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