Collection: Turner, Carlton E.: Files
Folder Title: [Chron File 1983-1986 (Miscellaneous Papers)] (4)
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WITHDRAWAL SHEET

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Collection Name TURNER, CARLTON: FILES

Withdrawer KDB 1/9/2008

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FOIA F06-0060/01 POTTER

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7

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
1	NOTE	KENNETH BARUN TO C. TURNER RE ATTACHED LETTER (W/ADDED NOTE) THE ABOVE DOCUMENT IS PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	1	7/21/1986	Open 11/2/09 KMU
1	MEMO	KENNETH BARUN TO C. TURNER RE ATTACHED LETTER (W/RESPONSE ADDED) THE ABOVE DOCUMENT IS PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	1	7/21/1986	

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

File

T. Boone Pickens, Jr.
P.O. Box 2009
Amarillo, Texas 79189

7 OCT 1986

3926

CT - This appears to be a form letter. Not appropriate. No answer required.
Dick

October 2, 1986

The Hon. Carlton E. Turner
Deputy Asst to the President
for Drug Abuse Policy
The White House
Washington, DC 20500

Dear Carlton:

Just a note to call your attention to the New York Stock Exchange's recent decision to drop its 60 year tradition of only listing corporations which adhere to the "one-share, one-vote standard." One-share, one-vote is a basic tenet of stock ownership and a fundamental shareholder right.

The SEC votes up or down on the rule change during the coming 90 days. It is essential for shareholders that the SEC hold full public hearings on this controversial issue. I would appreciate it if you would contact John Shad at the SEC and encourage him to hold public hearings.

Enclosed find a press release which will give you some background on the New York Stock Exchange's decision. Any help you can give us on this issue will be appreciated. I look forward to hearing from you.

Sincerely,

Boone

T. Boone Pickens, Jr.

encl.

T Boone Pickens Jr.

United Shareholders Association

FOR IMMEDIATE RELEASE
MONDAY, SEPTEMBER 29, 1986

CONTACT: DAVID CARMEN
(202) 393-4600

PICKENS CALLS NYSE DECISION UNACCEPTABLE --
CALLS FOR FULL PUBLIC HEARINGS AT SEC

WASHINGTON -- THE T. BOONE PICKENS UNITED SHAREHOLDERS ASSOCIATION TODAY CALLED UPON THE SECURITIES AND EXCHANGE COMMISSION TO HOLD FULL PUBLIC HEARINGS ON THE DECISION BY THE NEW YORK STOCK EXCHANGE TO DROP ITS "ONE SHARE, ONE VOTE" REQUIREMENT FOR LISTED CORPORATIONS.

THE NYSE, IN A MOVE THAT HAD BEEN EXPECTED FOR MONTHS, FILED ITS PROPOSED RULE CHANGE WITH THE SEC ON SEPTEMBER 16.

THE SEC MUST APPROVE OR DISAPPROVE THE DECISION WITHIN 90 DAYS. THE COMMISSION HAS THE DISCRETION TO HOLD HEARINGS PRIOR TO VOTING ON THE RULE CHANGE. THE ASSOCIATION PLANS TO PUSH VIGOROUSLY FOR FULL PUBLIC HEARINGS ON THE SUBJECT.

T. BOONE PICKENS, CHAIRMAN OF THE UNITED SHAREHOLDERS ASSOCIATION, SAID, "ONE SHARE, ONE VOTE IS THE BASIC TENET OF SHAREHOLDERS' RIGHTS. THE EXCHANGE'S DECISION IS A BAD DEAL FOR EVERY SHAREHOLDER IN AMERICA, A BAD DEAL FOR THE NYSE, AND A BAD DEAL FOR THE U.S. ECONOMY. THERE'S ONLY ONE GROUP IN TOWN CELEBRATING THIS ONE - THE ENTRENCHED MANAGERS OF LARGE CORPORATIONS. THOSE GUYS ARE DELIGHTED TO SEE THE STANDARDS LOWERED AND SHAREHOLDERS FURTHER DISENFRANCHISED."

"THE EXCHANGE DECIDED THIS ISSUE IN CLOSED MEETINGS. IT IS ESSENTIAL THAT STOCKHOLDERS AND OTHER MEMBERS OF THE PUBLIC HAVE AN OPPORTUNITY TO VOICE THEIR CONCERNS ON SUCH A FUNDAMENTAL ISSUE AS ONE SHARE, ONE VOTE."

STOCK WITH UNEQUAL VOTING RIGHTS CAN BE USED TO GIVE A SMALL GROUP OF SHAREHOLDERS, IN MANY CASES MANAGEMENT, THE POWER TO CONTROL SHAREHOLDER VOTES. DUAL CLASSIFICATIONS OF STOCK WITH UNEQUAL VOTING RIGHTS HAVE BEEN PROHIBITED ON THE NYSE FOR MORE THAN 60 YEARS.

THE EXCHANGE REACHED ITS DECISION WITHOUT CONSULTING INDIVIDUAL SHAREHOLDERS. NO FORMAL ANALYSIS HAS BEEN MADE TO DETERMINE THE EFFECTS THE DECISION WILL HAVE ON STOCK VALUES.

A LETTER TO SEC CHAIRMAN JOHN SHAD FROM NYSE CHAIRMAN JOHN PHELAN INDICATED THAT ALTHOUGH THE EXCHANGE HAD AGREED TO LOWER ITS STANDARDS, IT DID SO WITH REGRET. "THE DECISION WAS A DIFFICULT ONE IN THAT THE BOARD BELIEVES (THE ONE SHARE, ONE VOTE STANDARD) SHOULD BE PRESERVED," PHELAN SAID IN THE LETTER.

AL SOMMERS, CO-CHAIRMAN OF THE NYSE SUBCOMMITTEE ON "SHAREHOLDER PARTICIPATION AND QUALITATIVE LISTING STANDARDS," WHICH RECOMMENDED THE RULE CHANGE, HAS PUBLICLY ENDORSED FULL SEC HEARINGS ON THE SUBJECT.

THE T. BOONE PICKENS UNITED SHAREHOLDERS ASSOCIATION WAS LAUNCHED IN AUGUST. THE ORGANIZATION REPRESENTS THE INTERESTS OF AMERICA'S 47 MILLION SHAREHOLDERS AND HAS PLEDGED ITS 1.3 MILLION DOLLAR ANNUAL BUDGET TO ADVOCATE SHAREHOLDERS' RIGHTS, WITH ONE SHARE, ONE VOTE AT THE TOP OF ITS PRIORITY LIST.

PICKENS, 58, IS THE FOUNDER OF AMERICA'S LARGEST INDEPENDENT OIL AND GAS COMPANY, MESA LIMITED PARTNERSHIP.

-- 3Ø --

FOR: CET
from Fred

Assistant Secretary of Labor
for Mine Safety and Health
4015 Wilson Blvd.
Arlington, Virginia 22203

Donna
Set up
ASAP

235-1385

Carlton

Your father-in-law, Jack DuBay, and I are old friends from east Ky. When I came up here 3 years ago, he told me to get in touch with you. Let's get together for lunch sometime.

Dave Zgeer 10/28

1771 N STREET, N.W.
WASHINGTON, D.C. 20036

NATIONAL ASSOCIATION OF BROADCASTERS

EDWARD O. FRITTS
PRESIDENT & CEO
(202) 429-5444

October 22, 1986

27 OCT 1986

3708

Carlton E. Turner, Ph.D.
Director, Drug Abuse Policy and
Deputy Assistant to the President
The White House
Washington, D.C. 20500

Dear Carlton:

Thank you for your thoughtfulness in sending a copy of the President's remarks at the opening ceremony for National Drug Abuse Education and Prevention Week and for the formal proclamation signed by the President. It was indeed an honor for me to be present at the opening of this week.

We at NAB stand committed to assisting the White House whenever and wherever we can. This crusade has our utmost attention and concern.

Once again, thank you for including me in this special ceremony.

Kindest personal regards,

Eddie

THE WHITE HOUSE

10-29-86

Dear John,

Thanks for your recent letter. I am pleased with your concern about drug abuse and how Equifax can fit into the overall solution. Certainly Equifax must make business decision based on the strategic plan. Good luck with your efforts and do stop by to see me when you are in D.C.

Give my best to everyone.

Carla

THE WHITE HOUSE
WASHINGTON

Mr. John C. Rahiya
Vice President, Marketing
Equifax Services
1600 Peachtree Street, N.W.
Atlanta, GA 30309

EQUIFAX
SERVICES
Equifax Services Inc.
1600 Peachtree Street, N.W.
Atlanta, Georgia 30309

John C. Rahiya
Vice President
Marketing

23 OCT 1986

2682

October 17, 1986

Carlton Turner, Ph.D.
Deputy Assistant to the President for
Drug Abuse Policy
The White House
1600 Pennsylvania Avenue N. W.
Washington, DC 20500

Dear Carlton:

I felt it important to communicate to you on a recent decision Equifax has made concerning our Drug Abuse Management Services. Equifax Services has determined that it will discontinue offering collection of specimens relating to drug testing, to new customers, for employment purposes. The relationships with existing customers, however, will be maintained until their needs can be fulfilled by firms providing similar services or alternative means.

The corporate mission of Equifax is to provide information that helps consumers and business do business together. We feel it is important to continue to concentrate our resources on our information services and pursue those services that are most closely aligned with our strategic direction. After substantial evaluation, we have determined that our Drug Abuse Management Services are not consistent with the strategic direction of our company.

As corporate citizens, we share concerns for the future and quality of life in the communities in which our people live and work. Equifax will continue to support community and civic endeavors in the fight against drug abuse.

Carlton, it was a privilege and honor for us to have the opportunity to meet with you during your March visit to Atlanta. We fully support the effort being expended in the fight against drugs. The degree of commitment tells me success will one day be achieved.

Sincerely,

John C. Rahiya
Vice President
Marketing

JR:pah

THE WHITE HOUSE

10-30-86

Dear Juliana,

Thank you for the Photos and letter. It was very thoughtful of you to follow them with everything. Yesterday, I actually spent time with R. Mackenzie. It is a pleasure to see friends.

We now have our bills signed into law and are taking agressive steps to stop drug abuse.

Cant

[redacted]

[redacted]

LÄÄKINTÖHALLITUS

THE NATIONAL BOARD OF HEALTH
Siltasaarenkatu 18 A, PB 223
SF-00531 HELSINKI 53 Finland
Tel. 77231 Telex 121774 nbh sf

Helsinki October 20, 1986

29 OCT 1986
3724

Dr. Carlton Turner
Deputy Assistant to the President
and Director, Office of Drug Abuse
Policy
White House
17th and Pensylvania Ave.N.W.
Washington DC
U.S.A.

Dear Dr. Turner,

Having returned from my trip I would like to express my most sincere thanks to You for being my host during my visit to White House last month. It was truly a great experience to enter so deeply into the Drug Abuse Situation of the USA and to have such a close look at your national policies.

I appreciate the talks we had, that provided a great deal of information and an excellent illustration of your efforts in this field.

I am looking forward to meeting You again very soon, until then I remain

Yours sincerely

Juhana Idänpään-Heikkilä

Sept. 16, 1986
10:00

Ballroom

THE WHITE HOUSE
WASHINGTON

11:30am - Informal Reception
12:15pm - Secretary Dole escorted to head table and lunch will begin
12:50pm - Introduction of head table guests including you
1:05pm - Governor Volpe introduces Secretary Dole
1:07pm - Secretary Dole speaks
1:20pm - Car to West Wing
1:30pm - Admiral Poindexter/W Wing

NATIONAL COMMISSION AGAINST DRUNK DRIVING

December 2, 1985

Mr. Carlton Turner
Special Assistant to the President
The White House
Washington, D.C. 20500

Dear Mr. Turner,

We want to invite you to be our guest at a special luncheon to be held Wednesday, December 18, 1985, in honor of Secretary Elizabeth H. Dole.

Secretary Dole will receive the first annual Humanitarian Award to be presented by the National Commission Against Drunk Driving. The award is given in recognition of her commitment and leadership in the continuing effort against drunk and impaired driving.

The luncheon will begin at 11:30 a.m. at the J.W. Marriott Hotel, Pennsylvania Avenue at 14th Street. Please use the enclosed card to indicate whether you will attend.

We hope it will be possible for you to be with us.

Sincerely,

V.J. Adduci

P.S. Hope you are feeling well

P.O. BOX 28048 • WASHINGTON, D.C. 20005

THE WHITE HOUSE

WASHINGTON

2489

11 JUL 1985

July 8, 1985

MEMORANDUM FOR CARLTON E. TURNER
DEPUTY ASSISTANT TO THE PRESIDENT
FOR DRUG ABUSE POLICY

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Unauthorized Use of Mrs. Reagan's Photograph in Alcoholism Magazine

Pursuant to your request, Loran D. Archer of your office forwarded to me the February 1985 issue of Alcoholism magazine. Mrs. Reagan's name and photograph appear in an advertisement for Comprehensive Care Corporation on its back cover. You have inquired whether the unauthorized use of her photograph in this instance violates federal law, and what action, if any, might be appropriate.

The use of Mrs. Reagan's name and photograph does not violate federal law. However, it does run afoul of a longstanding policy of this Administration and its predecessors to object to any use of the name, signature or likeness of the President, or the First Lady, which suggests any statement of their endorsement of, or affiliation with, a commercial venture. This policy is spelled out in the Council of Better Business Bureau's Do's and Don'ts in Advertising Copy.

The standard approach of this office is to advise violators of this policy, and to request that they cease the unauthorized activity immediately. In view of the fact that your office has already protested the advertisement and has extracted an apology from the offender, a letter from this office appears unnecessary.

In the future, rather than contacting such persons directly, please refer any situations of this nature to our office for handling consistent with established policy and procedures.

FYI

JOHN L. MERKT

Office:
306 West, State Capitol
P.O. Box 8953
Madison, WI 53708
Telephone: (608) 266-3756

Hotline:
1 (800) 362-9696

Wisconsin Legislature
Assembly Chamber

58th Assembly District
Jackson, Germantown, Towns of West Bend, Polk & Cedarburg, Village of Thiensville, City of Mequon

COMMITTEE MEMBER:
Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

August 4, 1986

5 AUG 1986
3748

For your information

File

Mr. Ed Meese
% Mr. John Richardson
Department of Justice
10th and Constitutional Ave. N.W.
Washington, D.C. 20530

Dear Mr. Meese:

By now you should have received a letter from our former Governor Lee Sherman Dreyfus, asking you to seriously consider the "Len Bias Bill" which I have discussed and sent information about to various individuals in the Administration, as well as your Department.

I sincerely hope that you will consider, if not endorsing, allowing the Administration and/or your department to mention Wisconsin's proposed legislation as one of the many new weapons law enforcement, both state and federal, should be considering adding to the arsenal in our weaponry against our terrible drug problem.

The information included in this packet I hope will adequately explain the concept of this proposal, namely, if the drug you give/sell results directly in death, you may be easily prosecutable for murder.

I feel this is a good "middle ground" proposal which adequately supplements the drug testing proposals we are all rather familiar with, and yet does not get into the "swamp" of Capital Punishment, such as Mayor Koch is calling for, and truly, as the President recently said, deeply divides our citizenry.

I feel my proposal (bi-partisan as you will see) has four main strong points:

1) Justice is served; if someone dies, the "killer" should be charged with murder;

2) People tempted to use cocaine for the first time just might not do so if we can constantly keep the cloud of death hanging over this capricious drug;

3) People undoubtedly will be less inclined to give to a friend, pass out the drug at parties, or get involved in small scale peddling if they know the penalty could be murder;

4) The bill allows murder charges to be filed against anyone supplying the drug as far up the distribution ladder as responsibility can be traced. We can indeed go after Mr. Big.

But my proposal is chiefly designed to make cocaine synonymous with two other words . . . murder and death. If we can truly hammer away that the three go together, perhaps we can begin to turn the tide in this war against drug terrorists.

I absolutely am convinced this proposal, that can be a model legislation in Wisconsin, could be proven successful and be emulated throughout our nation. It is conceivable that a form of it could be used by the federal government itself. Please consider it, and feel free to contact me at any time. I know that the President wishes his administration to be remembered most for successfully combating Organized Crime. I believe this would be an extremely useful tool.

Sincerely,

John L. Merkt

John L. Merkt
Representative to the Assembly
58th District

JLM:vls

Enclosures: Editorials
Milwaukee Journal
Milwaukee Sentinel
Wisconsin State Journal

Our old statutes
Our new proposal
Press Releases

Opinion Page
Wisconsin State Journal Friday, August 1, 1986, Section 1, Page 10

Coke dealers, state wants your number

The deaths of Len Bias, a young basketball star, and Don Rogers, a promising professional football player, brought home in shocking terms the message that cocaine can kill.

Medical professionals and others familiar with the drug were already painfully aware of its deadly effects. Sadly, it took the sacrifice of two healthy athletes to galvanize public attention.

Until the Bias-Rogers incidents, how many people were aware that cocaine has claimed more than a score of lives in Wisconsin? (Twenty-one deaths between 1980 and 1985 were related to cocaine, state figures show.)

So far as we know, most of the people who supplied those 21 fatal fixes are alive and well. Some probably remain in the cocaine supply "business," not really caring that their illegal actions could lead to even more deaths.

The Legislature recently toughened state laws dealing with cocaine possession and sales, but those changes did not address the question, "How should society deal with someone who supplies an illegal drug that kills someone else?"

Two state legislators, Republican John Merkt of Mequon and Democrat John Medinger of La Crosse, think they have the answer: treat them like killers.

They have proposed broadening the definition of second-degree murder to include deaths from cocaine and other drugs. Such cases probably would be tough to prosecute under Wisconsin's current second-degree murder law, which defines "conduct imminently dangerous to another" but also requires evidence of "a depraved mind" for a finding of guilt.

The state manslaughter law does not fit the bill, either, because it applies to killings in the heat of passion, in self-defense or in defense of another person.

Merkt and Medinger will present their proposal today at a meeting of the state Council on Alcohol and Drug Abuse. While rewriting a criminal statute is no minor undertaking, it is an idea the council should endorse.

If drug dealers know they are facing the possibility of a lengthy prison sentence every time they sell a gram of cocaine, the chilling effects on this despicable market could be significant.

Paying for drug deaths

Milwaukee Sentinel 7/9/86

The recent cocaine-related deaths of two prominent athletes have certainly shocked the sports world.

But they happen not only to the Len Biases or Don Rogerses of the world. They happen to people who might as well have no names at all. They die, and the world goes on much as it did.

No one mourns. The death is that inconsequential.

Recently, figures show there were 21 cocaine-related deaths in Wisconsin between 1980 and the first half of 1985. How many people knew that? And how many really care?

In contrast, only five deaths were attributable to heroin during that period, said State Rep. David T. Prosser Jr. (R-Appleton).

Meantime, people who follow statistics report that there were 32 hospital admissions related to cocaine abuse in Wisconsin in 1985. The figure could be even higher, but it represents the total of only 3 of the more than 135 emergency rooms in the state.

The State Legislature recently acted by increasing penalties for those convicted of selling or possessing cocaine. But what of when death occurs? Should there be a special penalty? Do state statutes adequately cover such a possibility?

State Reps. John Merkt (R-Mequon) and John Medinger (D-La Crosse), chairman of the Council on Alcohol and Drug Abuse, are looking for some answers and plan to present them to the council in August.

One possibility is penalizing, under an expanded second-degree murder statute, anyone convicted of providing cocaine to a person who subsequently dies from its use.

It is a question worth probing — for all the victims of drug abuse and those who feed on it.

Lethal drug dispensers truly are killers

If the cocaine deaths of young athletes Len Bias and Don Rogers do nothing else, perhaps they will make a few would-be drug dabblers think twice before flirting with an equal-opportunity destroyer.

But there's another message that ought to flow from these tragedies: Anyone who supplies another person with an illegal drug that results in the death of the user deserves to be treated like a killer. Not an intentional killer, perhaps, but a killer in the broadest sense.

The laws in many states, however, aren't written that way. Wisconsin's rather vague statute on second-degree murder, for example, requires evidence of "a depraved mind" for a finding of guilt. The state's manslaughter statute is primarily designed to cover killings committed in the heat of passion, in self-defense or in defense of another person.

State Rep. John Merkt (R-Mequon) thinks such laws need to be revised to include contributors to drug deaths. Working with fellow lawmakers and others, Merkt is looking specifically at the possibility of broadening the definition of second-degree murder to include deaths from cocaine and other illegal drugs. "Somehow, we've got to get cocaine associated in people's minds with death and even murder," Merkt emphasizes.

We agree. That approach seems all the more appropriate in light of recent cocaine trends: The street form of the drug is becoming increasingly cheap and increasingly pure (read: deadly). Thus it's likely that coke use and fatalities will rise.

Of course, it will take more than tougher laws to dispel the mystique of cocaine. Also necessary are expanded drug education efforts, mandatory drug testing for athletes, and a concerted federal commitment to cracking down on foreign countries that export cocaine. States can do their part, however, by throwing the book at the people who supply those fatal highs.

CHAPTER 939

CRIMES — GENERAL PROVISIONS

PRELIMINARY PROVISIONS.

939.01 Name and interpretation. Chapters 939 to 948 may be referred to as the criminal code but shall not be interpreted as a unit. Crimes committed prior to July 1, 1956, are not affected by chs. 939 to 948.

History: 1979 c. 89.

939.03 Jurisdiction of state over crime. (1) A person is subject to prosecution and punishment under the law of this state if:

(a) He commits a crime, any of the constituent elements of which takes place in this state; or

(b) While out of this state, he aids and abets, conspires with, or advises, incites, commands, or solicits another to commit a crime in this state; or

(c) While out of this state, he does an act with intent that it cause in this state a consequence set forth in a section defining a crime; or

(d) While out of this state, he steals and subsequently brings any of the stolen property into this state.

(2) In this section "state" includes area within the boundaries of the state, and area over which the state exercises concurrent jurisdiction under article IX, section 1, of the constitution.

History: 1983 a. 192.

Jurisdiction over crime committed by Menominee while on the Menominee Indian Reservation discussed. State ex rel. Pyatskowit v. Montour, 72 W (2d) 277, 240 NW (2d) 186.

Treaties between federal government and Menominee tribe do not deprive state of criminal subject matter jurisdiction over crime committed by a Menominee outside the reservation. Sturdevant v. State, 76 W (2d) 247, 251 NW (2d) 50.

See note to Art. I, sec. 8, citing State ex rel. Skinkis v. Treffert, 90 W (2d) 528, 280 NW (2d) 316 (Ct. App. 1979).

Fisherman who violated Minnesota and Wisconsin fishing laws while standing on Minnesota bank of Mississippi was subject to Wisconsin prosecution. State v. Nelson, 92 W (2d) 855, 285 NW (2d) 924 (Ct. App. 1979)

See note to 346.65, citing County of Walworth v. Rohner, 108 W (2d) 713, 324 NW (2d) 682 (1982).

939.05 Parties to crime. (1) Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although he did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(2) A person is concerned in the commission of the crime if he:

(a) Directly commits the crime; or

(b) Intentionally aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a natural and probable consequence of the intended crime. This paragraph does not apply to a person who voluntarily

changes his mind and no longer desires that the crime be committed and notifies the other parties concerned of his withdrawal within a reasonable time before the commission of the crime so as to allow the others also to withdraw.

It is desirable but not mandatory that an information refer to this section where the district attorney knows in advance that a conviction can only be based on participation and the court can instruct and the defendant can be convicted on the basis of the section in the absence of a showing of adverse effect on the defendant. Bethards v. State, 45 W (2d) 606, 173 NW (2d) 634.

It is not error that an information charging a crime does not also charge defendant with being a party to a crime. Nicholas v. State, 49 W (2d) 683, 183 NW (2d) 11.

Under sub. (2) (c) a conspirator is one who is concerned with a crime prior to its actual commission. State v. Haugen, 52 W (2d) 791, 191 NW (2d) 12.

An information charging defendant with being a party to a crime need not set forth the particular subsection relied upon. A defendant can be convicted of 1st degree murder under this statute even though he claims that he only intended to rob and an accomplice did the shooting. State v. Cydzik, 60 W (2d) 683, 211 NW (2d) 421.

The state need not elect as to which of the elements of the charge it is relying on. Hardison v. State, 61 W (2d) 262, 212 NW (2d) 103.

See note to 940.01, citing Clark v. State, 62 W (2d) 194.

Evidence establishing that defendant's car was used in robbery getaway was sufficient to convict defendant of armed robbery, party to a crime, where defendant admitted sole possession of car on night of robbery. Taylor v. State, 74 W (2d) 255, 246 NW (2d) 518.

Conduct undertaken to intentionally aid another in commission of a crime and which yields such assistance constitutes aiding and abetting the crime and whatever it entails as a natural consequence. State v. Asfoor, 75 W (2d) 411, 249 NW (2d) 529.

Defendants may be found guilty under (2) if, between them, they perform all necessary elements of crime with awareness of what the others are doing; each defendant need not be present at scene of crime. Roehl v. State, 77 W (2d) 398, 253 NW (2d) 210.

Aiding-and-abetting theory and conspiracy theory discussed. State v. Charbarneau, 82 W (2d) 644, 264 NW (2d) 227.

Withdrawal under (2) (c) must be timely. Zelenka v. State, 83 W (2d) 601, 266 NW (2d) 279 (1978).

This section applies to all crimes except where legislative intent clearly indicates otherwise. State v. Tronca, 84 W (2d) 68, 267 NW (2d) 216 (1978).

Proof of a "stake in the venture" is not needed to convict under (2) (b). Krueger v. State, 84 W (2d) 272, 267 NW (2d) 602 (1978).

Multiple conspiracies discussed. Bergeron v. State, 85 W (2d) 595, 271 NW (2d) 386 (1978).

Jury need not unanimously agree whether defendant (1) directly committed crime, (2) aided and abetted its commission, or (3) conspired with another to commit it. Holland v. State, 91 W (2d) 134, 280 NW (2d) 288 (1979).

See note to 946.62, citing Vogel v. State, 96 W (2d) 372, 291 NW (2d) 850 (1980).

Aider and abettor who withdraws from conspiracy does not remove self from aiding and abetting. May v. State, 97 W (2d) 175, 293 NW (2d) 478 (1980).

Party to crime is guilty of that crime whether or not party intended that crime or had intent of its perpetrator. State v. Stanton, 106 W (2d) 172, 316 NW (2d) 134 (Ct. App. 1982.)

See note to 161.41, citing State v. Hecht, 116 W (2d) 605, 342 NW (2d) 721 (1984).

Unanimity requirement was satisfied when jury unanimously found that accused participated in crime. Lampkins v. Gagnon, 710 F (2d) 374 (1983).

This section does not shift burden of proof. Prosecution need not specify which paragraph of (2) under which it intends to proceed. Madden v. Israel, 478 F Supp. 1234 (1979).

Liability for coconspirator's crimes in the Wisconsin party to a crime statute. 66 MLR 344 (1983).

Application of Gipson's unanimous verdict rationale to the Wisconsin party to a crime statute. 1980 WLR 597.

Wisconsin's party to a crime statute: The mens rea element under the aiding and abetting subsection, and the aiding and abetting-choate conspiracy distinction. 1984 WLR 769.

939.10 Common-law crimes abolished; common-law rules preserved. Common-law crimes are abolished. The common-law rules of criminal law not in conflict with chs. 939 to 948 are preserved.

History: 1979 c. 89.

939.12 Crime defined. A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

939.14 Criminal conduct or contributory negligence of victim no defense. It is no defense to a prosecution for a crime that the victim also was guilty of a crime or was contributorily negligent.

Jury instruction that defrauded party had no duty to investigate fraudulent representations was correct. Lambert v. State, 73 W (2d) 590, 243 NW (2d) 524.

939.20 Provisions which apply only to chapters 939 to 948. Sections 939.22 and 939.23 apply only to crimes defined in chs. 939 to 948. Other sections in ch. 939 apply to crimes defined in other chapters of the statutes as well as to those defined in chs. 939 to 948.

History: 1979 c. 89.

939.22 Words and phrases defined. In chs. 939 to 948, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

(2) "Airgun" means a weapon which expels a missile by the expansion of compressed air or other gas.

(4) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(6) "Crime" has the meaning designated in s. 939.12.

(8) "Criminal intent" has the meaning designated in s. 939.23.

(10) "Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in s. 941.295 (4); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

(11) "Drug" has the meaning specified in s. 450.06.

(12) "Felony" has the meaning designated in s. 939.60.

940.02 Second-degree murder. Whoever causes the death of another human being under either of the following circumstances is guilty of a Class B felony:

(1) By conduct imminently dangerous to another and evincing a depraved mind, regardless of human life; or

(2) As a natural and probable consequence of the commission of or attempt to commit a felony.

History: 1977 c. 173.

As to 2nd degree murder the reference is to conduct evincing a certain state of mind, not that the state of mind actually exists. Ameen v. State, 51 W (2d) 175, 186 NW (2d) 206.

See note to 940.01, citing State v. Wells, 51 W (2d) 477, 187 NW (2d) 328.

Trial court refusal to give defendant's requested definition of the depraved mind necessary for second-degree murder as defined by the supreme court in State v. Weso, 60 W (2d) 404, did not constitute an abuse of discretion where Weso neither changed the law with respect to this element of the crime nor held that the standard instruction thereon was either unclear or inadequate. Hughes v. State, 68 W (2d) 159, 227 NW (2d) 911.

Beating and kicking smaller, unconscious victim constitutes conduct imminently dangerous and evincing a depraved mind. Wangerin v. State, 73 W (2d) 427, 243 NW (2d) 448.

Where victim, known by defendant to be violent, attacked defendant with a knife and defendant shot victim 5 times, allegedly by accident, trial court did not err in instructing jury on lesser charge of second-degree murder on grounds that defendant did not intend victim's death. McAllister v. State, 74 W (2d) 246, 246 NW (2d) 511.

Sexual molestation of nine year old girl resulting in fatal traumatic shock constituted conduct presenting an apparent and conscious danger of producing death. Turner v. State, 76 W (2d) 1, 250 NW (2d) 706.

Where defendant was drag racing along street while intoxicated but apparently swerved in attempt to avoid hitting victim, the proof was insufficient in respect to conduct imminently dangerous to another. Wagner v. State, 76 W (2d) 30, 250 NW (2d) 331.

See note to 940.05, citing State v. Klimas, 94 W (2d) 288, 288 NW (2d) 157 (Ct. App. 1979).

Essential difference between 1st and 2nd degree murder is intent to kill. Provocation will not reduce 1st degree murder to 2nd degree murder. State v. Lee, 108 W (2d) 1, 321 NW (2d) 108 (1982).

See note to Art. I, sec. 8, citing State v. Gordon, 111 W (2d) 133, 330 NW (2d) 564 (1983).

Where defendant is found guilty of homicide occurring during commission of a felony he may be sentenced for both offenses although separate verdicts were not submitted. Patelski v. Cady, 313 F Supp. 1268.

940.04 Abortion. (1) Any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than $5,000 or imprisoned not more than 3 years or both.

(2) Any person, other than the mother, who does either of the following may be imprisoned not more than 15 years:

(a) Intentionally destroys the life of an unborn quick child; or

(b) Causes the death of the mother by an act done with intent to destroy the life of an unborn child. It is unnecessary to prove that the fetus was alive when the act so causing the mother's death was committed.

(3) Any pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined not more than $200 or imprisoned not more than 6 months or both.

(4) Any pregnant woman who intentionally destroys the life of her unborn quick child or who consents to such destruction by another may be imprisoned not more than 2 years.

(5) This section does not apply to a therapeutic abortion which:

(a) Is performed by a physician; and

(b) Is necessary, or is advised by 2 other physicians as necessary, to save the life of the mother; and

(c) Unless an emergency prevents, is performed in a licensed maternity hospital.

(6) In this section "unborn child" means a human being from the time of conception until it is born alive.

Aborting child against father's wishes does not constitute intentional infliction of emotional distress. Przybyla v. Przybyla, 87 W (2d) 441, 275 NW (2d) 112 (Ct. App. 1978).

This section cited as similar to Texas statute which was held to violate the due process clause of the 14th amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Roe v. Wade, 410 US 113.

State may prohibit first trimester abortions by nonphysicians. Connecticut v. Menillo, 423 US 9.

Viability of unborn child discussed. Colautti v. Franklin, 439 US 379 (1979).

Any law requiring parental consent for minor to obtain abortion must ensure that parent does not have absolute, and possibly arbitrary, veto. Bellotti v. Baird, 443 US 622 (1979).

See note to art. I, sec. 1, citing Harris v. McRae, 448 US 297 (1980).

See note to art. I, sec. 1, citing Babbitz v. McCann, 310 F Supp. 293.

Where U.S. supreme court decisions clearly made Wisconsin antiabortion statute unenforceable, issue in physician's action for injunctive relief against enforcement became mooted, and it no longer presented case or controversy over which court could have jurisdiction. Larkin v. McCann, 368 F Supp. 1352.

State regulation of abortion. 1970 WLR 933.

940.05 Manslaughter. Whoever causes the death of another human being under any of the following circumstances is guilty of a Class C felony:

(1) Without intent to kill and while in the heat of passion; or

(2) Unnecessarily, in the exercise of his privilege of self-defense or defense of others or the privilege to prevent or terminate the commission of a felony; or

(3) Because such person is coerced by threats made by someone other than his coconspirator and which cause him reasonably to believe that his act is the only means of preventing imminent death to himself or another; or

(4) Because the pressure of natural physical forces causes such person reasonably to believe that his act is the only means of preventing imminent public disaster or imminent death to himself or another.

History: 1977 c. 173.

Uniform instruction No. 1140 as to self-defense approved. Mitchell v. State, 47 W (2d) 695, 177 NW (2d) 833.

Failure to negate the intentional nature of the killing or establish adequate provocation requires the refusal of a manslaughter instruction. State v. Lucynski, 48 W (2d) 232, 179 NW (2d) 889.

Where there was no evidence which would constitute either first or second degree murder a finding that defendant acted in the heat of passion will not sustain a conviction of manslaughter. Boissonneault v. State, 50 W (2d) 662, 184 NW (2d) 846.

A defendant is not entitled to submission of a manslaughter (self-defense) verdict when he testified that he did not intend to do the act which resulted in death. Day v. State, 55 W (2d) 756, 201 NW (2d) 42.

An instruction as to self-defense and one in regard to manslaughter are not mutually exclusive. Self-defense may be either a complete defense or a mitigation of murder. Ross v. State, 61 W (2d) 160, 211 NW (2d) 827.

Driveway incident took place 5 days prior to the shooting. Such anger would not constitute adequate provocation under (1). Marks v. State, 63 W (2d) 769, 218 NW (2d) 328.

Court declines to abandon the established objective test applied in manslaughter-heat of passion cases. Hayzes v. State, 64 W (2d) 189, 218 NW (2d) 717.

Instruction under (2) is proper only if, under some reasonable view, the evidence is sufficient to establish guilt of causing the death of another in the exercise of self-defense. Bedford v. State, 65 W (2d) 357, 222 NW (2d) 658.

Where defendant testified to being beaten continually by 2 officers after dropping gun and repeatedly asking officers to stop, trial court erred in refusing to instruct jury on possible "imperfect self-defense" of defendant in grabbing police revolver used in the beating and shooting both officers. State v. Mendoza, 80 W (2d) 122, 258 NW (2d) 260.

State of mind which distinguishes manslaughter from second-degree murder must necessarily be heat of passion required by (1), not depravity of mind evinced by conduct constituting second-degree murder. State v. Klimas, 94 W (2d) 288, 288 NW (2d) 157 (Ct. App. 1979).

Heat of passion has both objective (provocation) and subjective (state of mind) facets. State v. Williford, 103 W (2d) 98, 307 NW (2d) 277 (1981).

Conviction was supported by evidence that accused fired 3 shots at waist level through closed bedroom door. State v. Kelley, 107 W (2d) 540, 319 NW (2d) 869 (1982).

If defendant introduces sufficient evidence to raise heat of passion issue, state has burden to disprove it beyond reasonable doubt. State v. Lee, 108 W (2d) 1, 321 NW (2d) 108 (1982).

Language in (1) requiring that defendant act "without intent to kill" is a legal fiction. Heat of passion negates intent required for 1st degree murder, but defendant acting in heat of passion may still intend to kill. See note to 939.32, citing State v. Oliver, 108 W (2d) 25, 321 NW (2d) 119 (1982).

See note to Art. I, sec. 7, citing State v. Felton, 110 W (2d) 485, 329 NW (2d) 161 (1983).

940.06 Homicide by reckless conduct. (1) Whoever causes the death of another human being by reckless conduct is guilty of a Class C felony.

(2) Reckless conduct consists of an act which creates a situation of unreasonable risk and high probability of death or great bodily harm to another and which demonstrates a conscious disregard for the safety of another and a willingness to take known chances of perpetrating an injury. It is intended that this definition embraces all of the elements of what was heretofore known as gross negligence in the criminal law of Wisconsin.

History: 1977 c. 173.

When death results from illegal race on public highway, each driver directly commits homicide by reckless conduct, regardless of which automobile causes death. State v. McClose, 95 W (2d) 49, 289 NW (2d) 340 (Ct. App. 1980).

Conviction under this section does not require proof of intent to kill. See note to 853.11, citing in Matter of Estate of Satran, 102 W (2d) 79, 306 NW (2d) 27 (1981).

Modernizing Wisconsin's homicide statutes. Dickey and Fullin. WBB Jan. 1984.

940.07 Homicide resulting from negligent control of vicious animal. Whoever knowing the vicious propensities of any animal intentionally allows it to go at large or keeps it without ordinary care, if such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances may permit to avoid such animal, is guilty of a Class C felony.

History: 1977 c. 173.

940.08 Homicide by negligent use of vehicle or weapon. (1) Whoever causes the death of another human being by a high degree of negligence in the operation or handling of a vehicle, firearm, airgun, knife or bow and arrow is guilty of a Class E felony.

(2) A high degree of negligence is conduct which demonstrates ordinary negligence to a high degree, consisting of an act which the person should realize creates a situation of unreasonable risk and high probability of death or great bodily harm to another.

History: 1977 c. 173.

High degree of negligence is determined by objective "reasonable person" test; subjective intent is not an element of the offense. Victim's contributory negligence is no defense. Hart v. State, 75 W (2d) 371, 249 NW (2d) 810.

Motorist was properly convicted under this section for running red light at 50 m.p.h., even though speed limit was 55 m.p.h. State v. Cooper, 117 W (2d) 30, 344 NW (2d) 194 (Ct. App. 1983).

940.09 Homicide by intoxicated user of vehicle or firearm. (1) Any person who does either of the following under par. (a) or (b) is guilty of a Class D felony:

(a) Causes the death of another by the operation or handling of a vehicle, firearm or airgun and while under the influence of an intoxicant;

(b) Causes the death of another by the operation or handling of a vehicle, firearm or airgun while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

(c) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under ss. 343.30 (1q) and 343.305. Paragraphs (a) and (b) each require

proof of a fact for conviction which the other does not require.

(2) The actor has a defense if it appears by a preponderance of the evidence that the death would have occurred even if the actor had not been under the influence of an intoxicant or did not have a blood alcohol concentration described under sub. (1) (b).

(3) An officer who makes an arrest for a violation of this section shall make the report required under s. 346.635.

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13).

See note to art. I, sec. 11, citing State v. Jenkins, 80 W (2d) 426, 259 NW (2d) 109.

See note to art. I, sec. 11, citing State v. Bentley, 92 W (2d) 860, 286 NW (2d) 153 (Ct. App. 1979).

See note to art. I, sec. 8, citing State v. Rabe, 96 W (2d) 48, 291 NW (2d) 809 (1980).

940.12 Assisting suicide. Whoever with intent that another take his or her own life assists such person to commit suicide is guilty of a Class D felony.

History: 1977 c. 173.

BODILY SECURITY.

940.19 Battery; aggravated battery. (1) Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor.

(1m) Whoever causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class E felony.

(2) Whoever causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another with or without the consent of the person so harmed is guilty of a Class C felony.

(3) Whoever intentionally causes bodily harm to another by conduct which creates a high probability of great bodily harm is guilty of a Class E felony. A rebuttable presumption of conduct creating a high probability of great bodily harm arises:

(a) If the person harmed is 62 years of age or older; or

(b) If the person harmed has a physical disability, whether congenital or acquired by accident, injury or disease, which is discernible by an ordinary person viewing the physically disabled person.

History: 1977 c. 173; 1979 c. 111, 113.

See note to 939.22, citing La Barce v. State, 74 W (2d) 327, 246 NW (2d) 794.

Under facts of aggravated battery case, trial court erred both in finding "great bodily harm" as a matter of law and in refusing to instruct jury in lesser included offense of battery. Flores v. State, 76 W (2d) 50, 250 NW (2d) 720.

See note to Art. I, sec. 5, citing State v. Giwosky, 109 W (2d) 446, 326 NW (2d) 232 (1982).

940.20 Battery: special circumstances. (1) BATTERY BY PRISONERS. Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally causes bodily harm to an officer, employe, visitor or another inmate of such prison or institution, without his or her consent, is guilty of a Class D felony.

(2) BATTERY TO LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS. Whoever intentionally causes bodily harm to a law enforcement officer or fire fighter, as those terms are defined in s. 102.475 (8) (b) and (c), acting in an official capacity and the person knows or has reason to know that the victim is a law enforcement officer or fire fighter, by an act done without the consent of the person so injured, is guilty of a Class D felony.

(3) BATTERY TO WITNESSES AND JURORS. Whoever intentionally causes bodily harm to a person who he or she knows or has reason to know is or was a witness as defined in s. 940.41 (3) or a grand or petit juror, and by reason of the person having attended or testified as a witness or by reason of any verdict or indictment assented to by the person, without the consent of the person injured, is guilty of a Class D felony.

(4) BATTERY TO PUBLIC OFFICERS. Whoever intentionally causes bodily harm to a public officer in order to influence the action of such officer or as a result of any action taken within an official capacity, without the consent of the person injured, is guilty of a Class E felony.

History: 1977 c. 173, 1979 c. 30, 113, 221; 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4).

Resisting or obstructing an officer (946.41) is not a lesser-included crime of battery to a peace officer. State v. Zdiarstek, 53 W (2d) 776, 193 NW (2d) 833.

Battery to prospective witness is prohibited by 940.206, 1975 stats. [now 940.20 (3)]. McLeod v. State, 85 W (2d) 787, 271 NW (2d) 157 (Ct. App. 1978).

County deputy sheriff was not acting in official capacity under 940.205, 1975 stats. [now 940.20 (2)] when making arrest outside county of employment. State v. Barrett, 96 W (2d) 174, 291 NW (2d) 498 (1980).

940.201 Abuse of children. Whoever tortures a child or subjects a child to cruel maltreatment, including, but not limited, to severe bruising, lacerations, fractured bones, burns, internal injuries or any injury constituting great bodily harm under s. 939.22 (14), is guilty of a Class E felony. In this section, "child" means a person under 16 years of age.

History: 1977 c. 173, 355.

Section is not unconstitutionally vague or overly broad. State v. Kallory, 73 W (2d) 460, 243 NW (2d) 475.

Physical injury is not an element of crime of cruel maltreatment. State v. Campbell, 102 W (2d) 243, 306 NW (2d) 222 (Ct. App. 1981).

"LEN BIAS BILL"

AN ACT to amend 940.02 (intro.) and (1); and to create 940.02 (3) of the statutes, relating to manufacturing or delivering a controlled substance which causes death.

Analysis by the Legislative Reference Bureau

Under present law, a person who commits 2nd-degree murder is subject to a prison sentence of not more than 20 years. Second-degree murder occurs in 2 situations: the death is caused by dangerous conduct by someone showing a "depraved mind" or the death is a natural result of the commission of or attempt to commit a felony (often referred to as "felony murder"). This bill adds a 3rd type of 2nd-degree murder, similar to felony murder.

Under the bill, a person is guilty of 2nd-degree murder if he or she illegally manufactures or delivers a schedule I or II controlled substance (such as heroin, opium or cocaine) and a person dies as a result of using that controlled substance. The schedules of controlled substances are listed under the uniform controlled substances act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 940.02 (intro.) and (1) of the statutes are amended to read:

940.02 SECOND-DEGREE MURDER. (intro.) Whoever causes the death of another human being under ~~either~~ any of the following circumstances is guilty of a Class B felony:

(1) By conduct imminently dangerous to another and evincing a depraved mind, regardless of human life; ~~or~~.

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Assembly Chamber

58th Assembly District
Jackson, Germantown, Towns of West Bend, Polk & Cedarburg, Village of Thiensville, City of Mequon

COMMITTEE MEMBER:
Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 3, 1986
News Release
FOR IMMEDIATE RELEASE

MADISON . . . The District Attorney of Milwaukee County said Thursday that Wisconsin would be "well-served" if a state law were enacted to make a cocaine-related death clearly subject to a charge of murder.

E. Michael McCann encouraged Rep. John L. Merkt (R-Mequon) to proceed with his investigation on how Wisconsin's present second degree murder statute could be supplemented with a provision stating in no uncertain terms that a case may be successfully prosecuted against an individual selling or providing cocaine directly leading to death. According to Merkt, McCann told him that under present state statutes, a felony murder charge would be difficult to prove because the present statute is not at all clear, and also that there is no precedent for this type of case.

"The recent tragedies involving the deaths of famous athletes has brought out a fact that heretofore has not been publicized," said Merkt, "namely that cocaine has the nasty side effect of killing people. We must use every tool available to fight this insidious product from being advanced on such a massive scale by organized crime."

Rep. David Prosser (R-Appleton) released information on Wednesday pointing out that 21 deaths have been attributable to cocaine use in Wisconsin alone.

"I believe that Rep. Prosser is absolutely right in calling for an investigation of what the total scope of cocaine-related deaths is. Because of inadequate reporting mechanisms, I believe that the 21 deaths may be just the tip of an iceberg," said Merkt.

OVER

Rep. John Medinger (D-La Crosse), Chairman of the Wisconsin Council on Alcohol and Drug Abuse, is working with Merkt to fashion an appropriate mechanism to see that severe penalties can be levied on individuals causing death by transferring cocaine. Like Medinger, Merkt is also a member of the Council on Alcohol and Drug Abuse.

Merkt and Medinger are working with various law enforcement agencies to devise a new second degree murder statute. Medinger has directed a task force that has already made sweeping proposals with regard to combatting the cocaine problem.

"I would love to see those who sell or 'share' this menacing drug to know that in Wisconsin they would be risking a murder conviction due to new tough state laws. When a respected District Attorney like Mike McCann says that a change in the law would be a valuable service, I believe he should be listened to.

"If the law could be revised so that murder charges could be brought right on down the line to the individual flying this poison in from Columbia, so much the better," said Merkt. "A model Wisconsin statute that the rest of the nation could emulate would be a significant step in combatting organized crime and its despicable lackeys."

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COMMITTEE MEMBER:
Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 14, 1986
Press Release
FOR IMMEDIATE RELEASE

MADISON . . . Dr. Robert Hammel, a national expert on medical jurisprudence and an Administrator at the University of Wisconsin-Madison School of Pharmacy, told a state lawmaker that, "Cocaine is our greatest threat, not just in Wisconsin, but nationally because of its heightened availability and decreasing cost. Cocaine has gone from epidemic to pandemic proportions."

Rep. John L. Merkt (R-Mequon) and Rep. John Medinger (D-LaCrosse) have proposed unprecedented legislation that would make distribution of cocaine directly resulting in a death a second degree murder offense. "I have spoken to a vast array of medical and legal experts and have received overwhelming support for this piece of legislation," said Merkt.

"There is no doubt that giving or selling cocaine to an individual that results in their death is murder," said Thomas Hanratty, a Legal Medical Investigator for the Milwaukee County Medical Examiner's Office, "It's an excellent idea and I'm all for it."

Doug Chiappetta, the Director of the State and Federal Legislative Department of the National Federation of Parents for Drug Free Youth, also supports the legislation saying, "People may find this legislation shocking at first, but taking into account the exacerbated abuse of cocaine, we must start legislating laws that send strong and strident messages to those dealing in cocaine. The threat of a 20 year prison

term could possibly impede the market." Mr. Chiappetta plans to attend the August 1st meeting of the State Council on Alcohol and Other Drug Abuse, at which Reps. Merkt and Medinger intend to present their proposal. "I feel this legislation could have nationwide implications," added Chiappetta.

Rep. Merkt is also working with a prominent person in the Department of Justice with the goal of having President Reagan include the murder-cocaine proposal in a series of speeches that the President will be making on the subject of drug abuse in the coming weeks.

Merkt and Medinger will also be working with the help of the National Federation of Parents for Drug Free Youth to try to arrange a meeting with Nancy Reagan, who is the Honorary Chairman of the National Federation, to enlist her support for the new law.

For further information, Rep. Merkt can be reached at his Madison office at 608-266-3756 or at his home office, 414-242-4942.

-30-

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COMMITTEE MEMBER:
Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 16, 1986
Press Release
FOR IMMEDIATE RELEASE

MADISON . . . Two state lawmakers are receiving support both in Madison and in Washington, D.C. on their unprecedented proposal to make a cocaine-related death punishable via a second degree murder charge.

Thirty-four state legislators have expressed their support for the efforts of Rep. John L. Merkt and Rep. John D. Medinger (D-LaCrosse) to proceed with their efforts to amend and supplement Wisconsin's second degree murder statute so that an individual who directly causes the death of another due to cocaine that has been given or sold, and which the coroner in the case attributes to cocaine ingestion, can be charged with no less than second degree murder.

"Rep. Medinger and I are extremely pleased that our colleagues are strongly backing up our attempts to "throw the book at' the scum who are not only destroying careers and families, but in many incidences causing death itself," said Merkt, "Several legislators told me yesterday that their constituents are terrified by the easy availability of cocaine and its derivative, Crack, in their Wisconsin communities."

Merkt has contacted Mr. John Richardson, Chief of Staff of Attorney General Edwin Meese; Richardson has pledged the Justice Department's scrutiny and appropriate assistance for the unprecedented Medinger-Merkt proposal.

OVER

LEGISLATORS SUPPORTING "LEN BIAS BILL"

Rep. Dwight York (R)
Rep. Terry Musser (R)
Rep. John Manske (R)
Rep. William Plizka (R)
Rep. Dale Schultz (R)
Rep. Lary Swoboda (D)
Rep. Gus Menos (D)
Rep. Susan Vergeront (R)
Rep. Peter Barca (D)
Rep. James Ladwig (R)
Rep. Steven Foti (R)
Rep. Lolita Schneiders (R)
Rep. Calvin Potter (D)
Rep. Richard Grobschmidt (D)
Rep. Robert Cowles (R)
Rep. Heron Van Gorden (R)
Rep. Robert Goetsch (R)
Rep. Tommy Thompson (R)
Rep. David Prosser (R)
Rep. Richard Shoemaker (D)
Rep. Wayne Wood (D)
Rep. Dismas Becker (D)
Rep. Mary Hubler (D)
Rep. Esther Walling (R)
Rep. John Medinger (D)
Rep. John Merkt (R)

Sen. Joseph Andrea (D)
Sen. Brian Rude (R)
Sen. Alan Lasee (R)
Sen. Marvin Roshell (D)
Sen. Susan Engeleiter (R)
Sen. Walter Chilsen (R)
Sen. Charles Chvala (D)
Sen. Joseph Leean (R)

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COMMITTEE MEMBER:

Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 22, 1986
Press Release
FOR IMMEDIATE RELEASE

MADISON . . . Two state legislators are drafting a proposal that would make the penalty for a drug-related death by far the toughest of all 50 states, second-degree murder, while at the same time providing that anyone in the chain of command of Organized Crime involved in the death could be prosecuted as accessories to second-degree murder.

Rep. John L. Merkt (R-Mequon) and Rep. John D. Medinger (D-LaCrosse) are having the Legislative Reference Bureau draw up a bill which would provide the murder charge for anyone delivering a schedule 1 or schedule 2 controlled substance that would result in deaths similar to the recently publicized cases involving athletes Len Bias and Don Rogers. Merkt and Medinger are also requesting that any person who delivered the substance to the distributor may also be charged as an accessory to the crime, therefore making these individuals subject to prosecution for second-degree murder, which is a Class B Felony and carries a penalty of 20 years imprisonment.

"I am disturbed that in the case of Don Rogers, no charges are being issued, and in the case of Len Bias, the prosecutor is evidently seeking an indictment for distribution of drugs," said Merkt, "Unfortunately, these are not isolated instances. After checking with various law enforcement agencies in the United States, there seems to be an almost total absence of the means for and the attempts of prosecutions for murder, which is what a cocaine-related death should require."

OVER

Merkt and Medinger have been working with assistants to President Reagan and the Department of Justice, as well as prosecutors in California, Arizona, Maryland, and other states.

"The recent search and destroy missions in Bolivia certainly have their place in curtailing the cocaine epidemic we face in this state and nation," said Medinger, "But we also must use every weapon in our arsenal to combat Organized Crime's big money-maker, cocaine distribution, within the United States itself."

After talking to law enforcement officers, the lawmakers feel that there has been a distinct lack of going after the peddlers and their bosses on murder charges for various reasons.

"Evidently, some people feel that murder charges are too harsh in these kinds of instances," said Merkt, "We feel that murder charges are precisely what is called for. The legislation we are having drafted can serve as a model for the rest of the United States."

The legislators intend to have their proposal ready to present before the Council on Alcohol and Other Drug Abuse at its meeting on August 1st at the State Capitol.

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Wisconsin Legislature

Assembly Chamber

58th Assembly District

Jackson, Germantown, Towns of West Bend, Polk & Cedarburg, Village of Thiensville, City of Mequon

COMMITTEE MEMBER:

Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 30, 1986
Press Release
For Immediate Release

MADISON . . . The Wisconsin Council on Alcohol and Drug Abuse will be asked Friday morning to lend its support for a controversial measure calling for murder charges in the cases of drug deaths.

"I realize there are some people who will feel this is much too drastic," said Rep. John L. Merkt (R-Mequon), one of the bill's co-authors, "but the drug terrorism, especially with cocaine, absolutely requires drastic steps on the part of government."

Under the proposal fashioned by Merkt and Rep. John D. Medinger (D-LaCrosse), a person would be guilty of 2nd-degree murder if he or she illegally manufactures or delivers a schedule I or II controlled substance (such as heroin, opium, or cocaine) and a person dies as a result of using that controlled substance; the bill also states that if the drug is transferred more than once prior to the death, all of the distributors could be charged as accessories. The penalty in Wisconsin for 2nd-degree murder is a maximum of 20 years as a Class B felony.

The nation as a whole was shocked by the recent Len Bias and Don Rogers deaths due to cocaine ingestion, and the legislators where shocked to discover that none of the 50 states provides prosecutors with a clear option of bringing murder charges against the person who gave or sold the drug, according to Merkt.

"The first thing I did was call Michael McCann, the District Attorney of Milwaukee County. When Mr. McCann told me our state would be 'well-served' by such a change in our statutes to provide for a mechanism to bring murder charges and that he is totally supportive of our effort, we proceeded to put in five weeks of an all-out effort to fashion a law that could be a model for the rest of the country," said Merkt.

"We have also contacted numerous officials at both the White House and the Department of Justice to get their assistance in garnering information, and ultimately we hope to get the President's backing for our murder statute.

"On July 30th President Reagan initiated his special efforts to fight drug abuse from within our borders," said Merkt, "and we have been assured by high level officials in Washington that the President is seriously considering including our proposal along with others he will be making, such as drug testing, as he continues to try to initiate new efforts to combat the $125 billion drug trade in our country."

-OVER-

'Len Bias bill' would allow murder charges

+/- Wis. Sentinel 8/1/86

A person who provides narcotics to someone ho later dies from the drug use could be arged with second-degree murder under a en Bias bill" backed by several state offi- ıls.

Rep. John L. Merkt (R-Mequon) said he ould detail the proposal for members of the isconsin Council on Alcoholism and Other ug Abuse Friday.

"I'm hoping they can support this rather ntroversial measure," Merkt said Thursday. Ve want murder charges for those who cause Len Bias-type deaths."

Bias was the University of Maryland basketball star who died June 19 after cocaine use.

Merkt said he had discussed the proposal with US Justice Department officials and received encouragement. He said the law would be the first of its kind in the country.

"We want Wisconsin to get a reputation as being the last place drug pushers would want to come," he said.

Merkt said Milwaukee County Dist. Atty. E. Michael McCann also supported the measure.

US Atty. John R. Byrnes called the proposal a "good idea."

However, Byrnes said the law alone, if passed, would have little effect on curbing drug abuse.

"It's already against the law," he said. "But this ups the ante pretty considerably."

"I think it's a good idea because it will focus more attention on the fact that these drugs kill people," Byrnes said. "People who provide them in a recreational setting have a substantial criminal risk."

Merkt said the bill was primarily aimed at users of cocaine and crack, a dangerous, highly addictive and cheaper form of cocaine.

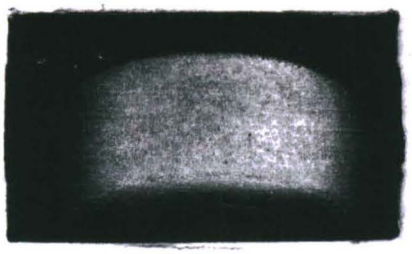
"I want people to be scared to death to take it for the first time," Merkt said. "Because of the capricious nature of cocaine, you don't know how it is going to affect them."

Merkt said the proposal was tied to a new anti-drug-abuse campaign President Reagan was expected to announce next week.

Donna:

He had me send back the original with the note he had written on it. This is a xerox for you, if you like.

Dena
7-22



THE WHITE HOUSE
WASHINGTON

Date: 7/21

TO: CT.

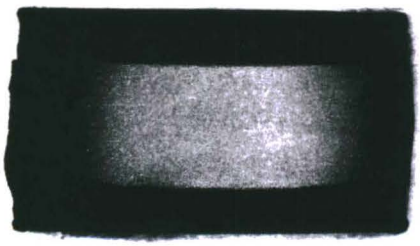
Can you take a look at this and advise?

Ken

FROM: KENNETH L. BARUN
Director of Projects and Policy
Office of the First Lady
213 East Wing, x7905

7-22-96

NO Way we should get Involved. This IS the AG's Role!! I told Thom we hoped they could draft a model. I will talk to them if AG does not!



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COMMITTEE MEMBER:

Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 17, 1986

Mr. Ken Barun
The White House
East Wing 213
Washington, D.C. 20500

Dear Mr. Barun:

Wisconsin State Representative John Medinger and I have taken the initiative on advancing anti-cocaine legislation within our state. Rep. Medinger, as the Chairman of our State Council on Alcohol and Other Drug Abuse, and I, as a member of the Council, have worked at strengthening current penalties for the distribution of cocaine.

We have found, along with the rest of the nation, that cocaine has become our largest drug problem. The Wisconsin Controlled Substances Board showed the number of clients admitted for treatment of primarily cocaine-related problems in our state had increased nearly 700% from 1976 to 1981. The deaths of 21 of our residents within the last five years, and most recently the deaths of Len Bias and Don Rogers, is convincing the public of something we already knew; cocaine and those who distribute it kill.

Therefore, we are proposing that the distribution of cocaine that results in an individual's death because of that drug, be considered a second degree murder offense. We have been working with Doug Chiappetta, the Director of State and Federal Legislation for the National Federation of Parents For Drug Free Youth, and have found this legislation to be unprecedented.

In view of the First Lady's dedication to dibilitating the drug market, we feel it would assist our efforts if, at her convenience, we could meet with Mrs. Reagan and discuss the far-reaching implications of this legislation. Our hope is that the threat of a Class B Felony, which in our state carries a maximum sentence of 20 years in prison, in a cocaine-related death will impede dealers and individuals from giving cocaine to first-time users and will cause the further realization that cocaine is a lethal drug.

I am enclosing two editorials recently published in the Milwaukee Journal and Milwaukee Sentinel in response to our proposal. The strong support that these newspapers have allowed us is just a protion of the wide support we are receiving from medical and legal experts throughout the nation. I am also enclosing our offices' press releases to date.

Realizing the late date, I appreciate the time restraint. But if at all possible, I would appreciate your response before August 1st, the day we will be presenting our proposal to our State Council on Alcohol and Other Drug Abuse.

I look forward to your reply at your earliest convenience. Thank you for your consideration.

Sincerely,

John L. Merkt

John L. Merkt
Republican
State Representative
58th District

JLM:vls

JOHN L. MERKT

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COMMITTEE MEMBER:
Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 3, 1986
News Release
FOR IMMEDIATE RELEASE

MADISON . . . The District Attorney of Milwaukee County said Thursday that Wisconsin would be "well-served" if a state law were enacted to make a cocaine-related death clearly subject to a charge of murder.

E. Michael McCann encouraged Rep. John L. Merkt (R-Mequon) to proceed with his investigation on how Wisconsin's present second degree murder statute could be supplemented with a provision stating in no uncertain terms that a case may be successfully prosecuted against an individual selling or providing cocaine directly leading to death. According to Merkt, McCann told him that under present state statutes, a felony murder charge would be difficult to prove because the present statute is not at all clear, and also that there is no precedent for this type of case.

"The recent tragedies involving the deaths of famous athletes has brought out a fact that heretofore has not been publicized," said Merkt, "namely that cocaine has the nasty side effect of killing people. We must use every tool available to fight this insidious product from being advanced on such a massive scale by organized crime."

Rep. David Prosser (R-Appleton) released information on Wednesday pointing out that 21 deaths have been attributable to cocaine use in Wisconsin alone.

"I believe that Rep. Prosser is absolutely right in calling for an investigation of what the total scope of cocaine-related deaths is. Because of inadequate reporting mechanisms, I believe that the 21 deaths may be just the tip of an iceberg," said Merkt.

OVER

Rep. John Medinger (D-La Crosse), Chairman of the Wisconsin Council on Alcohol and Drug Abuse, is working with Merkt to fashion an appropriate mechanism to see that severe penalties can be levied on individuals causing death by transferring cocaine. Like Medinger, Merkt is also a member of the Council on Alcohol and Drug Abuse.

Merkt and Medinger are working with various law enforcement agencies to devise a new second degree murder statute. Medinger has directed a task force that has already made sweeping proposals with regard to combatting the cocaine problem.

"I would love to see those who sell or 'share' this menacing drug to know that in Wisconsin they would be risking a murder conviction due to new tough state laws. When a respected District Attorney like Mike McCann says that a change in the law would be a valuable service, I believe he should be listened to.

"If the law could be revised so that murder charges could be brought right on down the line to the individual flying this poison in from Columbia, so much the better," said Merkt. "A model Wisconsin statute that the rest of the nation could emulate would be a significant step in combatting organized crime and its despicable lackeys."

JOHN L. MERKT

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COMMITTEE MEMBER:
Ways & Means
Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 16, 1986
Press Release
FOR IMMEDIATE RELEASE

MADISON . . . Two state lawmakers are receiving support both in Madison and in Washington, D.C. on their unprecedented proposal to make a cocaine-related death punishable via a second degree murder charge.

Thirty-one state legislators have expressed their support for the efforts of Rep. John L. Merkt and Rep. John D. Medinger (D-LaCrosse) to proceed with their efforts to amend and supplement Wisconsin's second degree murder statute so that an individual who directly causes the death of another due to cocaine that has been given or sold, and which the coroner in the case attributes to cocaine ingestion, can be charged with no less than second degree murder.

"Rep. Medinger and I are extremely pleased that our colleagues are strongly backing up our attempts to "throw the book at' the scum who are not only destroying careers and families, but in many incidences causing death itself," said Merkt, "Several legislators told me yesterday that their constituents are terrified by the easy availability of cocaine and its derivative, Crack, in their Wisconsin communities."

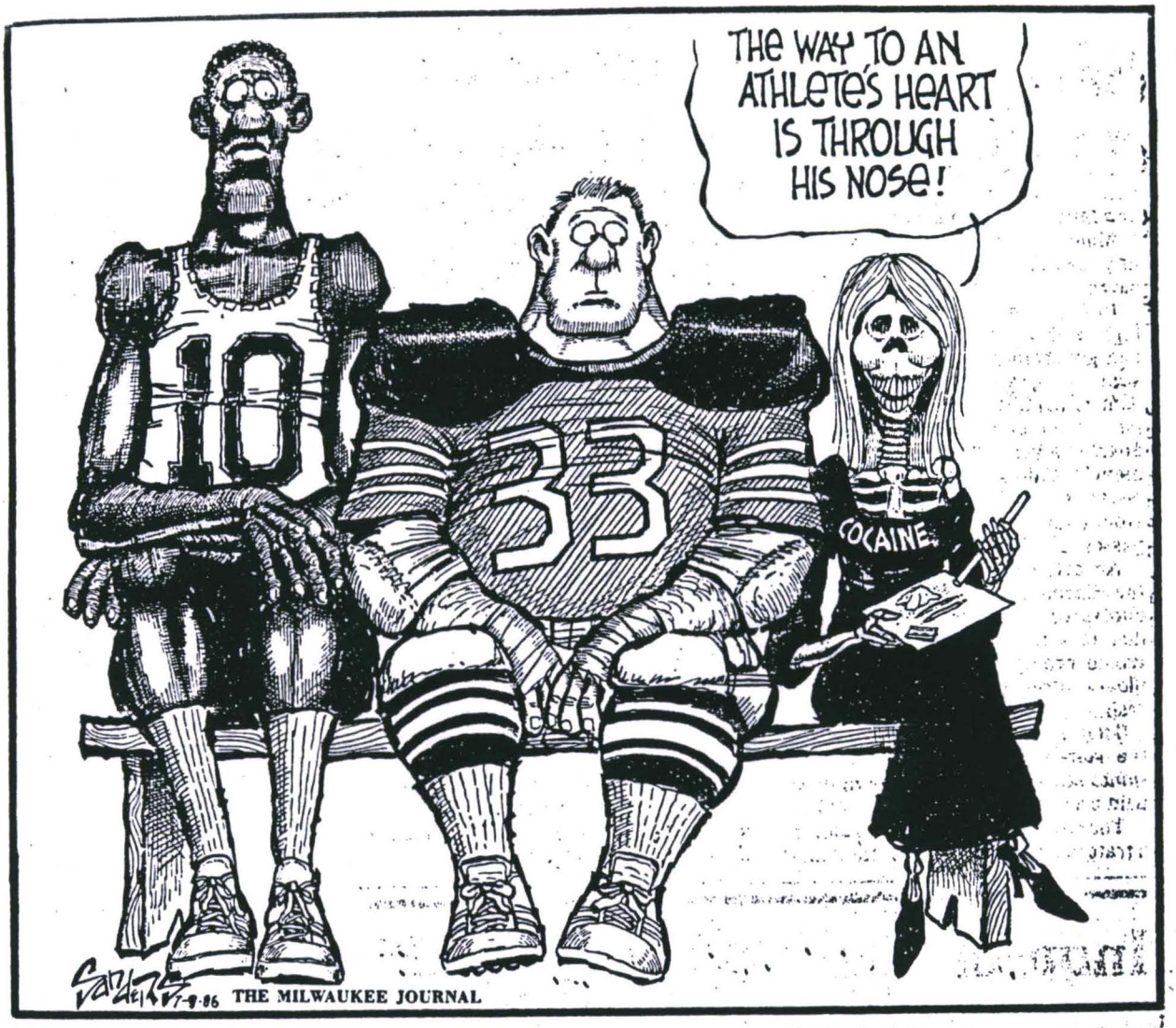
Merkt has contacted Mr. John Richardson, Chief of Staff of Attorney General Edwin Meese; Richardson has pledged the Justice Department's scrutiny and appropriate assistance for the unprecedented Medinger-Merkt proposal.

OVER

Merkt
Press Release
Add Two

Medinger-Merkt initiative:

Rep. Dwight York
Rep. Terry Musser
Rep. John Manske
Rep. William Plizka
Rep. Dale Schultz
Rep. Lary Swoboda
Rep. Gus Menos
Rep. Susan Vergeront
Rep. Peter Barca
Rep. James Ladwig
Rep. Steven Foti
Rep. Lolita Schneiders
Rep. Calvin Potter
Rep. Richard Grobschmidt
Rep. Robert Cowles
Rep. Heron Van Gorden
Rep. Robert Goetsch
Rep. Tommy Thompson
Rep. David Prosser
Rep. Richard Shoemaker
Rep. Wayne Wood
Rep. Dismas Becker
Rep. Mary Hubler
Sen. Alan Lasee
Sen. Joseph Andrea
Sen. Brian Rude
Sen. Marvin Roshell
Sen. Susan Engeleiter
Sen. Joseph Leean



Lethal drug dispensers truly are killers

If the cocaine deaths of young athletes Len Bias and Don Rogers do nothing else, perhaps they will make a few would-be drug dabblers think twice before flirting with an equal-opportunity destroyer.

But there's another message that ought to flow from these tragedies: Anyone who supplies another person with an illegal drug that results in the death of the user deserves to be treated like a killer. Not an intentional killer, perhaps, but a killer in the broadest sense.

The laws in many states, however, aren't written that way. Wisconsin's rather vague statute on second-degree murder, for example, requires evidence of "a depraved mind" for a finding of guilt. The state's manslaughter statute is primarily designed to cover killings committed in the heat of passion, in self-defense or in defense of another person.

State Rep. John Merkt (R-Mequon) thinks such laws need to be revised to include contributors to drug deaths. Working with fellow lawmakers and others, Merkt is looking specifically at the possibility of broadening the definition of second-degree murder to include deaths from cocaine and other illegal drugs. "Somehow, we've got to get cocaine associated in people's minds with death and even murder," Merkt emphasizes.

We agree. That approach seems all the more appropriate in light of recent cocaine trends: The street form of the drug is becoming increasingly cheap and increasingly pure (read: deadly). Thus it's likely that coke use and fatalities will rise.

Of course, it will take more than tougher laws to dispel the mystique of cocaine. Also necessary are expanded drug education efforts, mandatory drug testing for athletes, and a concerted federal commitment to cracking down on foreign countries that export cocaine. States can do their part, however, by throwing the book at the people who supply those fatal highs.

Paying for drug deaths

Milwaukee Sentinel 7/9/86

The recent cocaine-related deaths of two prominent athletes have certainly shocked the sports world.

But they happen not only to the Len Biases or Don Rogerses of the world. They happen to people who might as well have no names at all. They die, and the world goes on much as it did.

No one mourns. The death is that inconsequential.

Recently, figures show there were 21 cocaine-related deaths in Wisconsin between 1980 and the first half of 1985. How many people knew that? And how many really care?

In contrast, only five deaths were attributable to heroin during that period, said State Rep. David T. Prosser Jr. (R-Appleton).

Meantime, people who follow statistics report that there were 32 hospital admissions related to cocaine abuse in Wisconsin in 1985. The figure could be even higher, but it represents the total of only 3 of the more than 135 emergency rooms in the state.

The State Legislature recently acted by increasing penalties for those convicted of selling or possessing cocaine. But what of when death occurs? Should there be a special penalty? Do state statutes adequately cover such a possibility?

State Reps. John Merkt (R-Mequon) and John Medinger (D-La Crosse), chairman of the Council on Alcohol and Drug Abuse, are looking for some answers and plan to present them to the council in August.

One possibility is penalizing, under an expanded second-degree murder statute, anyone convicted of providing cocaine to a person who subsequently dies from its use.

It is a question worth probing — for all the victims of drug abuse and those who feed on it.

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COMMITTEE MEMBER:
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Commerce & Consumer Affairs
Joint Committee on Tax Exemptions

July 15, 1986

Dear Colleagues:

PLEASE JOIN US IN FIGHTING COCAINE TRAFFICKING AND LET YOUR CONSTITUENTS KNOW YOU ARE HITTING ORGANIZED CRIME WHERE IT HURTS:

We are working on many fronts, both state and national, to create a new statute that will, in some form, make selling or giving cocaine that directly results in death an offense classified as no less than some form of murder.

Just some of those supporting us are the following:

*Mike McCann, District Attorney, Milwaukee County
"It would well serve our state"

*Thomas Hauratty, Legal Medical Investigator for Milwaukee County Medical Examiner's Office
"It's an excellent idea. I'm all for it."

*Doug Chiapetta, Director of the State and Federal National Federation of Parents for Drug Free Youth
"People may find this legislation shocking . . . but we must send strong and strident messages to those dealing in Cocaine."

Please call either of our offices by noon today expressing your support for continuing the effort to link Cocaine with death and murder.

Sincerely,

John L. Merkt

John Medinger

CHAPTER 940

CRIMES AGAINST LIFE AND BODILY SECURITY

LIFE.

940.01 First-degree murder. (1) Whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

(2) In this chapter "intent to kill" means the mental purpose to take the life of another human being.

History: 1977 c. 173.

Conviction of 1st degree murder upheld where, in the course of a robbery, defendant severely and repeatedly hit the victim with a heavy bottle. State v. Wells, 51 W (2d) 477, 187 NW (2d) 328.

Evidence sufficiently supported defendant's conviction of first-degree murder (party to a crime) under proof that the victim was murdered by another with a weapon and ammunition supplied by defendant, who prior thereto, knowing his accomplice was looking for the victim and intended to kill him, not only furnished the murder weapon and demonstrated its use, but supplied his confederate with gasoline money for a car into which defendant, under pretext, lured the victim, and after the murder, defendant caused the weapon to be thrown into a lake in an attempt to hide his involvement. Clark v. State, 62 W (2d) 194, 214 NW (2d) 450.

Evidence warranted the jury in reasonably concluding defendant possessed the requisite intent to kill, contrary to his claim of intoxication based on his prior ingestion of liquor, the record disclosing he later, accompanied by a friend, knocked at the door of the victim's dwelling, and after a short conversation between the two, lunged at the door, pulled it open and fired his gun point-blank at the victim's head, his sobriety being further made manifest by his verbal recognition of his culpable plight and the manner in which he immediately thereafter maneuvered his car when he drove away. State v. Nemoir, 62 W (2d) 206, 214 NW (2d) 297.

Defendant's denial of intent to kill is refuted by the record establishing that after beating his victim about the head with the butt of his gun, defendant almost fatally injured the victim by firing a shot into her abdomen at almost point-blank range. Fells v. State, 65 W (2d) 525, 223 NW (2d) 507.

Trial court omission to instruct on intoxication cannot be urged on appeal to invalidate defendant's 1st-degree murder conviction, absent any request for an instruction on that defense or objections to the instructions given. Lee v. State, 65 W (2d) 648, 223 NW (2d) 455.

Where a person discharges a weapon at a vital body part and death ensues as a natural and probable result, a rebuttable presumption arises that he intended to take a human life, the burden of rebutting which is upon the defendant to bring forth evidence raising a reasonable doubt as to his intention to take life or as to whether such taking was justifiable or excusable. Smith v. State, 69 W (2d) 297, 230 NW (2d) 858.

Person convicted under this section is eligible for probation. State v. Wilson, 77 W (2d) 15, 252 NW (2d) 64.

Conviction of 1st degree murder was upheld where defendant's confession was corroborated by independent evidence in the record, including the defendant's own testimony. Schultz v. State, 82 W (2d) 737, 264 NW (2d) 245.

Psychiatric testimony which purports to prove or disprove specific intent is inadmissible during guilt phase of bifurcated trial. Court doubts whether such testimony is competent, relevant or probative in any criminal case. Steele v. State, 97 W (2d) 72, 294 NW (2d) 2 (1980).

See note to 907.02, citing State v. Dalton, 98 W (2d) 725, 298 NW (2d) 398 (Ct. App. 1980).

Trial court erred in refusing to submit verdict of endangering safety as lesser included offense on attempted murder charge where defendant admitted shooting victim in stomach but claimed self-defense. State v. Cartagena, 99 W (2d) 657, 299 NW (2d) 872 (1981).

See note to 903.03, citing State v. Schulz, 102 W (2d) 423, 307 NW (2d) 151 (1981).

See note to 939.05, citing State v. Stanton, 106 W (2d) 172, 316 NW (2d) 134 (Ct. App. 1982).

Where jury was instructed that persons are presumed to intend probable consequences of acts and where defendant was precluded from offering psychiatric testimony as to inability to form intent required for first-degree murder, prosecution was unconstitutionally relieved of proving intent element of crime. Hughes v. Mathews, 576 F (2d) 1250 (1978).

Evidence of diminished capacity inadmissible to show lack of intent. 1976 WLR 623.

Beck v. Alabama: The right to a lesser included offense instruction in capital cases. 1981 WLR 560.

Restricting the admission of psychiatric testimony on a defendant's mental state: Wisconsin's Steele curtain. 1981 WLR 733.

940.02 Second-degree murder. Whoever causes the death of another human being under either of the following circumstances is guilty of a Class B felony:

(1) By conduct imminently dangerous to another and evincing a depraved mind, regardless of human life; or

(2) As a natural and probable consequence of the commission of or attempt to commit a felony.

History: 1977 c. 173.

As to 2nd degree murder the reference is to conduct evincing a certain state of mind, not that the state of mind actually exists. Ameen v. State, 51 W (2d) 175, 186 NW (2d) 206.

See note to 940.01, citing State v. Wells, 51 W (2d) 477, 187 NW (2d) 328.

It is not correct that provocation may reduce a homicide to 2nd degree murder even though the provocation is not sufficient to reduce the offense to manslaughter. State v. Anderson, 51 W (2d) 557, 187 NW (2d) 335.

Trial court refusal to give defendant's requested definition of the depraved mind necessary for second-degree murder as defined by the supreme court in State v. Weso, 60 W (2d) 404, did not constitute an abuse of discretion where Weso neither changed the law with respect to this element of the crime nor held that the standard instruction thereon was either unclear or inadequate. Hughes v. State, 68 W (2d) 159, 227 NW (2d) 911.

Beating and kicking smaller, unconscious victim constitutes conduct imminently dangerous and evincing a depraved mind. Wangerin v. State, 73 W (2d) 427, 243 NW (2d) 448.

Where victim, known by defendant to be violent, attacked defendant with a knife and defendant shot victim 5 times, allegedly by accident, trial court did not err in instructing jury on lesser charge of second-degree murder on grounds that defendant did not intend victim's death. McAllister v. State, 74 W (2d) 246, 246 NW (2d) 511.

Sexual molestation of nine year old girl resulting in fatal traumatic shock constituted conduct presenting an apparent and conscious danger of producing death. Turner v. State, 76 W (2d) 1, 250 NW (2d) 706.

Where defendant was drag racing along street while intoxicated but apparently swerved in attempt to avoid hitting victim, the proof was insufficient in respect to conduct imminently dangerous to another. Wagner v. State, 76 W (2d) 30, 250 NW (2d) 331.

See note to 940.05, citing State v. Klimas, 94 W (2d) 288, 288 NW (2d) 157 (Ct. App. 1979).

Where defendant is found guilty of homicide occurring during commission of a felony he may be sentenced for both offenses although separate verdicts were not submitted. Patelski v. Cady, 313 F Supp. 1268.

940.04 Abortion. (1) Any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than $5,000 or imprisoned not more than 3 years or both.

(2) Any person, other than the mother, who does either of the following may be imprisoned not more than 15 years:

(a) Intentionally destroys the life of an unborn quick child; or

(b) Causes the death of the mother by an act done with intent to destroy the life of an unborn child. It is unnecessary to prove that the fetus was alive when the act so causing the mother's death was committed.

(3) Any pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined not more than $200 or imprisoned not more than 6 months or both.

(4) Any pregnant woman who intentionally destroys the life of her unborn quick child or who consents to such destruction by another may be imprisoned not more than 2 years.

(5) This section does not apply to a therapeutic abortion which:

(a) Is performed by a physician; and

(b) Is necessary, or is advised by 2 other physicians as necessary, to save the life of the mother; and

(c) Unless an emergency prevents, is performed in a licensed maternity hospital.

(6) In this section "unborn child" means a human being from the time of conception until it is born alive.

Aborting child against father's wishes does not constitute intentional infliction of emotional distress. Przybyla v. Przybyla, 87 W (2d) 441, 275 NW (2d) 112 (Ct. App. 1978).

This section cited as similar to Texas statute which was held to violate the due process clause of the 14th amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Roe v. Wade, 410 US 113.

State may prohibit first trimester abortions by nonphysicians. Connecticut v. Menillo, 423 US 9.

Viability of unborn child discussed. Colautti v. Franklin, 439 US 379 (1979).

Any law requiring parental consent for minor to obtain abortion must ensure that parent does not have absolute, and possibly arbitrary, veto. Bellotti v. Baird, 443 US 622 (1979).

See note to art. I, sec. 1, citing Harris v. McRae, 448 US 297 (1980).

See note to art. I, sec. 1, citing Babbitz v. McCann, 310 F Supp. 293.

Where U.S. supreme court decisions clearly made Wisconsin antiabortion statute unenforceable, issue in physician's action for injunctive relief against enforcement became mooted, and it no longer presented case or controversy over which court could have jurisdiction. Larkin v. McCann, 368 F Supp. 1352.

State regulation of abortion. 1970 WLR 933.

940.05 Manslaughter. Whoever causes the death of another human being under any of the following circumstances is guilty of a Class C felony:

(1) Without intent to kill and while in the heat of passion; or

(2) Unnecessarily, in the exercise of his privilege of self-defense or defense of others or the privilege to prevent or terminate the commission of a felony; or

(3) Because such person is coerced by threats made by someone other than his coconspirator and which cause him reasonably to believe that his act is the only means of preventing imminent death to himself or another; or

(4) Because the pressure of natural physical forces causes such person reasonably to believe that his act is the only means of preventing imminent public disaster or imminent death to himself or another.

History: 1977 c. 173.

Uniform instruction No. 1140 as to self-defense approved. Mitchell v. State, 47 W (2d) 695, 177 NW (2d) 833.

Failure to negate the intentional nature of the killing or establish adequate provocation requires the refusal of a manslaughter instruction. State v. Lucynski, 48 W (2d) 232, 179 NW (2d) 889.