

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

January 24, 2000 LB 509

first degree murder under the felony murder rule. And they had press conferences with the fire chief, the police chief, the mayor, the county attorney, and all these politicians saying, because a fireman died in this fire, somebody is going to pay. So the county attorney brought this charge. Senator Bourne didn't see fit to do anything about it and nobody else, but I did. And I wrote the county attorney what amounted to a brief, pointing out that he was wrong. And in the same way that Gary Lacey in the article that Senator Bourne handed around, said, without referring to the law, I'm not going to argue it, I acted on the law and the facts. But when the matter went to a preliminary hearing, the very arguments that I gave were given by the public defender and the judge accepted them and said, you cannot charge felony murder in this case, and the charge was manslaughter. So don't tell me, Senator Bourne, Senator Brown, and others who were listening to the county attorneys out there that they know the law simply because they've gone to law school. Senator Bruning and Senator Matzke have given me a basis to resist now any law that you all want to bring in here that attaches a punishment, because the Pardons Board can erase any of those punishments too. But you don't hear them give those arguments, do you? When they want to increase a punishment, you don't hear them give those arguments. Senator Matzke didn't pay attention to me this morning because he said the case I read was long before the constitution was amended to adopt the equal protection clause. That's not correct, Senator Matzke. The case I cited was the Supreme Court construing the application of the equal protection clause. The court said it cannot apply retroactively. If the court says the constitutional amendment cannot apply, then no argument based on it can apply retroactively. Senator Bourne knows that. Senator Matzke knows it and Senator Bruning knows it. If you're going to base an argument on a constitutional provision and the court has said the constitutional provision itself does not apply, how are you going to say then an argument is stronger than the amendment itself? The court has already said that it does not apply. The case discussed it because a man on death row tried to have it applied to his case and the Supreme Court said, no, it does not apply. There is nothing in the language that says it is to be retroactive. So I hope what we will...

SENATOR CUDABACK: One minute.