

Capital Punishment, Fred S. Farr

0:00 - This is the California State Senate Interim Committee on Correctional Facilities and Services and this committee is on this day investigating the matter of Capital Punishment. The members of the committee James Bush (from Yulia) on my right

0:30 - Senator William Beard from El Centro who sent word that he was not able to be here because the California Sheriffs Association is meeting with him this afternoon he is also chairman of Senate Interim Committee of Narcotics and is tied up with the Sheriffs Association. We have with us Senator-elect Hugo Fisher from San Diego, we also have Mr. Murray Stravers our counsel for the senate special secretary executive secretary for the senate judiciary committee and

1:00 - this is Ruth White who is the secretary of the Senate Interim Committee on Correctional Facilities and Services. We have invited this morning as our first witness the director of Corrections Richard A McGee and received word at the last minute that unfortunately due to a serious illness in his family he was unable to be here but I would like to call Mr. Miller who is the regional director of the Department of Corrections for Southern California who I believe has a

1:30 - statement on behalf of director McGee....

2:00 - My name is Robert R. Mueller I am the Regional supervisor for the division of adult parole

2:30 - of the Department of Corrections, Mr. McGee requested that I appear for him this morning question that I fear for him this morning and initially, he wishes me to express his very sincere regret over the fact that he was unable to appear himself as has been stated by the chairman this morning unforeseen illness made it necessary for him to remain at Sacramento.

3:00 - Mr. McGee Communicated with me this morning an eight-point statement which he requested that I present to the committee.

3:30 - The statement is as follows and I might say that I am quoting directly from Mr. McGee, point one: irrespective of what action may be taken on the abolition of capital punishment or a moratorium thereof section 4500 of the penal should be amended in any event to give discretion to the court regarding the mandatory death penalty

4:00 - in the case of prisoners serving life sentences who commit assaults in prison grand juries have recently been refusing to indict in these cases because no defendant in recent years has been

executed if the victim did not die point two I favor Amendment of the present capital punishment laws I would prefer the six-year moratorium to

4:30 - test the validity of the contention that the death penalty is a deterrent experience of such States as Michigan Wisconsin and Minnesota indicates that it has no effect. Three: If the moratorium is not acceptable to the legislature then a modification calling for the death penalty only in those cases of homicide of

5:00 - peace officers in the line of duty or homicides by life prisoners or parolees or ex-convicts previously convicted on crimes of violence is suggested. Point four: I would rather retain some occasional use of the death penalty than to substitute therefor Life terms without the possibility of parole this would put the pressure

5:30 - of release on the governor instead of on the parole board and thus impose an even greater burden on the chief executive and might under some circumstances and courage political intervention in parole and executive clemency matters. Point five: If the death penalty is retained on a basis of its only possible justification

6:00 - namely that of deterrence then consideration should be given to public executions in the community where the crime was committed long delays and restricted public observation of the execution by public assembly or by photography detracts from the doubtful theory of deterrence. Point six: The death penalty as a means of Exterminating and

6:30 - I beg your pardon extermination of dangerous and undesirable criminals cannot be supported in our culture 5 to 10 executions per year in California in the face of about 400 willful homicide should be convincing evidence that the courts and the juries of California do not support such a theory. Now on point seven,

7:00 - Mr. McGee requested that I go over briefly a very simple chart which relates the rate of executions per 10 million population in California from 1932 to 1938 to 1932 we did not have such a population order for statistical purposes it is computed as if we

7:30 - had such population. The use of the death penalty has been declining in California for many years without an increase in the homicide rate in support of this it is pointed up that in the year 1932 executions per 10 million population were 22,

8:00 - In 1937, 21 and 1/2 in 19 these are five-year intervals to start in 1942, 11 and 1/2 in 1947, 7 in 1950, to 7 1/2 in 1957, 6 1/3 in 1958, 4. Mr. McGhee makes the point that during the same period of time

8:30 - there was no appreciable increase or change in the homicide rate. Point eight:
Discontinuation of the death penalty would have a negligible effect of an operating the cost of the freight state prison system careful analysis of data ramifications and cross indicate a savings of added cost in the event of

9:00 - abolition of the death penalty amounting of \$30,000 the first year to \$20,000 the sixth year and decreasing amounts thereafter and any of that the addition of five or six prisoners per year with life turns to a total population of 19000 prisoners would have no significant effect on state cost obviously at the present time this is not to be this matter

9:30 - is not to be settled on a cost basis.

-Could you please file that statement with the record, Mr. Mueller.

-Yes, I'd like to ask you what's it cost per year to maintain a prisoner at the state

10:00 - of San Quentin.

-I cannot answer that too authoritatively because my particular work is in the field however I believe the current costs are in the neighborhood of 13 to 15 or \$1,600 per year depending upon the institution.

-Have you ever determined what the life expectancy is of any of the prisoners who are on condemned row awaiting execution? I would not have that

10:30 - information.

-I believe at one time it was reported by Mr. McGee that it was around 20 years, which would mean that the cost of maintaining these prisoners who are convicted and have been given a life sentence, which put them there for probably 20 years if they never received parole and cost the state around 26 or \$27,000 to keep there

11:00 - wouldn't it?

-I believe statistically it could be computed yes at the average life span times the average annual cost for maintenance of one inmate, yes sir.

-Senator-elect Fisher.

-I have one question.

-Mr. Mueller, Director McGee did he send with you, I asked him if he would

11:30 - prepare a list of some of the persons serving in the general prison populations whose crimes might be considered as heinous as those serving on death row, did he furnish you with some material of that effect?

-He did not but.

- I have this and I was wondering if you wouldn't mind reading this on the record because he did expect to testify on that this morning.

12:00 - This is his cover letter.

- Do you want to read it in its entirety?
- Yes, I think it's just 2 Pages if you could read that, please. Well, the document starts with the identification of.
- I think that you might leave the name off, just the prison number.
- The first case refers to the fact that 22 victims died

12:30 - in a fire set by Holman.

-Would you leave the name of the individual out?

-I beg your pardon. That the inmate was found guilty of setting fire to an apartment house which resulted in the death of 22 people and was sentenced to life.

-You wish the legal information into the record sir?

-How many counts did he receive?

-It doesn't, he has 22 counts he was received 82544 from San Francisco county on a charge of murder first-degree

13:00 - 22 counts with the sentence of life. The next case referred to, the victim died as a result of knife wounds inflicted during a fight the inmate became engaged in a gambling game with the victim and became involved in a fight during which knife wounds were inflicted, causing victims death, jury made no recommendation as to sentence,

13:30 - the judge fixed the sentence at life. After released on parole on manslaughter conviction, the inmate was returned for murder first. he was received seven 7953 from Los Angeles County, for murder first-degree, with a sentence of life. The next case states that the victim shot was shot through the heart during a robbery/ The inmate and his co-defendant, a San Francisco

14:00 - gang, conspired to rob the victim- a bookmaker - through information supplied by an associate of the victim. During the robbery, the inmates gun was discharged and the victim was shot through the heart he was received on to 2 - 2150 from San Francisco County, charged with murder first-degree, with a sentence of life. Next case refers to a victim that was

14:30 - killed with a frying pan. Circumstances where that after visiting his landlady, the inmate left for a lodge meeting. He later returned and killed the landlady with a frying pan. Several articles of Julie were recovered in the inmate's apartment. He was received 10750 from San Francisco county on a charge of murder first-degree, and receive a sense of life. Next case the

15:00 - victim was shot through the heart after accepting an invitation. Following a dance in the San Francisco Civic Auditorium. n 3-29-52, the inmate invited the victim to meet him in the park for a fight. Upon arriving at the park and the inmate produced a gun with which he killed two

victims, and wounded three others before the gun jammed. He was received on 8-5-52 from San Francisco County, charged

15:30 - with murder first-degree, murder second-degree and assault with intent to commit murder and was sentenced to Life, 5 to life, and 1 to 14 years. In the next case, the victim suffered a broken jaw and dislocated vertebrae. He murdered a 14-year-old girl he had taken to San Marcos Pass for the purposes of intercourse. The victim suffered a fractured jaw dislocation of the first cervical vertebra and

16:00 - tearing of the ligament connecting the second cervical vertebrae with the skull. The inmate confessed the murder. Four doctors agree that he was not psychotic and not epileptic. Two doctors maintained that he was epileptic. The judge would not order the death penalty because of this testimony. He was received on 11-25-52 from Santa Barbara County on a charge of murder first-degree and under sentence of life.

16:30 - You have another page of those, I think, if you wouldn't mind, that we got the rest of this in the record because there are several witnesses that have to leave in just a very short time so can you be with us and we can get the rest of that on the record at a later time, Mr. Miller,

- I'm sorry?

- I said if you don't mind, I think we can get the rest of that testimony in the record at a little later time I see we have some witnesses out here who's time is extremely pressed, so would you mind if we asked you to withdraw for a minute and then we will bring you back later on as a witness.

- You'll bring be back later on.

- Yes, thank you.

17:00 - I'd like to take this time to call Dean Robert Kingsley, the dean of the USC law school. Dean Kingsley:

- My name is Robert Kingsley I am Dean of the school of law at the University of Southern California,

17:30 - a member of the citizens advisory committee to the attorney general of California on criminal law enforcement. I should make it clear that, however everything I say here, I am not saying as my capacity as Dean, I am just a lawyer and a member of that committee, a person who's put some study on this problem. I'm not going to say anything to

18:00 - this committee about the tomorrow or ethical aspects of capital punishment. Those are matters which are particularly in the hearts and feelings of individuals, and in any event since you have other witnesses who have more expertise in than I could have, if it is subject for expert testimony. I have made some study of the statistical information

18:30 - so far as that information is available in public records and in published reports to me it seems very clear that there is no evidence that the existence or the non-existence of capital punishment has any effect on murder rates, the

19:00 - abolition of capital punishment statistically does not follow, is not followed by increase the restoration of capital punishment in states where it has been abolished and restored has not been followed by a decrease in murder rates, over any period sufficiently long to have any validity. It's true in any state the murder rates will vary one

19:30 - or two cases a year, up or down those obviously are due, or at least presumptively due to factors other than the punishment. But taking figures over any period of time long enough to give a valid sample, there is simply no evidence one way or the other on the effect on capital punishment on murder rates.

20:00 - Now a question of senator Bush a minute ago, suggests my next point. Which is that it seems to me that capital punishment in California is something which we cannot afford, either economically, or more important that we cannot afford it for the things to which it does to the general operation of our system of

20:30 - criminal law, particularly in the courts. If the defendant is charged with murder in this state, under the present law, no reputable defense counsel will dare take the chance of pleading him guilty unless he had previously made

21:00 - arrangements which he was sure of for the imposition of a life sentence. He would not be doing justice to his client if he did not insist on trying the case on, trying to the jury, the question of the penalty in the hopes that the jury would return the life sentence rather than the capital punishment.

21:30 - That means then, trial after trial, in cases in which there is no real doubt of guilt the time of the courts all the court shades are taken off with those preceding. For reasons that we all remember too well, the law of California provides an automatic appeal to the California Supreme court in every case

22:00 - in which the death penalty is imposed in the trial court. Again we get the spectacle and I have read every case in California since 1928, we get the spectacle of case, after case. Going up to the supreme court with the expense of preparing the transcripts, the expense briefs, the use of the time of a court already overburdened with

22:30 - many important matters. To decide cases many of which obviously should not have been appealed and would not have been appealed had a life sentence rather than the death penalty been involved. California has become a notorious jurisdiction throughout the world because of the activities of a

23:00 - prisoner now under the sentence of death. I think that was one of the first things about California justice about which I was asked when I lectured in South Africa this last summer, was that case. We've been treated to the spectacle of years and years of various legal maneuvers on behalf of that particular person,

23:30 - designed to save him from the execution. He is not the first, he is the most widely publicized but ever since I came to California, in 1928, there have been a large series of those cases. Rets of caremnovas, rets of habeas corpus in the states and in the federal courts, appeals, applications for source to the united states supreme court

24:00 - so that the ultimate execution has been dragged out for years, again, as I say solely, to keep these people from capital punishment. You notice we don't get these proceedings, we don't get this complication of rets upon rets for the life prisoner, we get it in the capital cases.

24:30 - Now that means as I say not only, I don't suggest that economics is the principal consideration here, but we do get a tremendous cost to the public in these cases, the cost of trying one or two of these cases, is far greater than the cost of maintaining the

25:00 - defendant in the state prison, but more important as I say I think it's a fact that we clutter up our whole system of justice we use up time of courts, of prosecutors, time of appellate courts on matters where no demonstrable advantage is being gained. If it were clear that capital punishment was essential to prevent murder

25:30 - then we might say that, "well this is a necessary cost to keep people from being willfully murdered in California". But since that is not true, since we have no evidence that we are accomplishing anything by this it seems to me that it's time we abandoned it and adopted a system of somewhat more sensible values. Now as I say there are other obviously other

26:00 - factors which other witnesses, I'm sure will present to you I think we cannot lose sight of the fact that hard as we try in the administration of justice we have no positive assurance that our decisions are correct. The defendant who is convicted and sentenced to a term in imprisonment and later found to be innocent can have

26:30 - some measure of reparation made to him. The person who has been convicted of murder and executed and we later find that he is innocent is a person for whom society can make no recompense. As a lawyer, it disturbs me to engage in an operation in which that

27:00 - extreme of finality is attached to a judgment to which in its very nature must necessarily be open to some possibility of doubt, now I know you've had cited to you on other occasions, I'm not going to take up time here, with the list of situations thought the united states to which this type of error has occurred the Sunday

27:30 magazines I think three weeks ago recounted of the latest of that log series obviously not the last of such a series. Those, sir, are my reason, perhaps overly practical, for saying that I think Capital Punishment should be abolished.

-Dean Kinsly do you know if any study has ever been made on the cost

28:00 - for respect of the supreme court on handling appeals on murder cases?

- I don't know that any has in dollars and cents figures...

- do you know time, how much time of the court is taken in murder appeals?

- well, I have forgotten the exact figure there are some which I remember 15 or 20 such

28:30 - appeals a year go up. And, almost all of them result in a fermus, you got a long opinion recounting all the facts and then the ultimate conclusion the case was tried fairly without error the evidence supports the verdict the decision of capital punishment was committed by law to the jury. -Has any comparison been made between the

29:00 - capital punishment and the abolition states with respect to the time taken by the supreme court of that state, in such cases?

-I don't have those figures with me we know that we have by reason of the automatic appeal we have a far larger percentage of murder cases before the appellate court in this state that is normal in states not having that system we all remember the

29:30 - unfortunate episode which led the legislature who put in the automatic appeal provision I'm sure.

-Do you know of a study that's been made with respect to the superior courts of California as to the length of capital cases as compared to other cases, as to the length of time of trial I'm talking about?

-That I can't tell you, my point is not that they take unduly long, my point is that

30:00 - there are more of them trying at all that is any necessity for. I think any experienced criminal defense attorney will tell you that he will be happy to plead his client guilty in many of

these cases to murder second if it would be acceptable or even to murder first as with an understanding as to sentence, but that ...

-When a life is involved, he has to try a case.

30:30 - Yeah, but my point, in other words, is it's not that they take too long on trying but they shouldn't- we shouldn't -take any time with it.

-Dean, do you know of any case in California where an innocent man has been executed?

-I don't know of any, I have been told by people in- connected with -the

31:00 - law enforcement agencies of two cases in which they were of considerable doubt as to the accuracy. The published materials do not include any modern California authorities on it.

-Dean, why would you think of a law that would require any person who was sentenced to death, to exhaust all his remedies within a year after

31:30 - his sentence?

-Well, I don't know about what, necessarily an agreement on an exact time limit, I think things can and should be done procedurally to eliminate this constant repetition how far the United States Supreme Court would sustain such a statute if they were in violation of due process, I don't know. -Yes, but assuming that it might be constitutional

32:00 - to enact a law that would require any person who was convicted and sentenced to death to exhaust all his remedies within one year, it would eliminate a lot of the expense that you have been talking about, is that right?

-It would eliminate part of it, currently wouldn't eliminate the necessity for a trial the necessity for the appeal, the necessity for the proceedings within the year. We got rid of this seventh and eighth year,

32:30 - I better not use the phrase.

-Assuming such a law would be upheld, what is your view on that do you think it would be a good law or not, I would favor, senator, any correction of our procedural system which would improve its administration

33:00 - I certainly wouldn't oppose, I would favor anything of that sort on its independent merits I think we ought to administer our criminal laws as efficiently as we can and do justice to both sides, both the state and the defendant. Senator-elect Fisher, Dean I'd like to ask, in what if you have any idea

33:30 - how many of these capital cases go to the supreme court on automatic appeal, is their expense involved on the part of the county and state by way of the defense itself that is where

there is appointed an attorney at the county level or on appeal. The public defender is going to testify for you I imagine he would have the exact figure from this county

34:00 - and probably that would be pretty typical of the state. You'll notice in the record that in I think every one of them there has either been an appearance of a public defender or appointment of counsel by the court, so there would be a substantial number of them where, well in every one of them there is some public expense for representation.

-I see. Do you have any feelings about this on moral grounds?

-Yes,

34:30 - my own feeling is against it on moral grounds, I think I've made that pretty clear on a previous appearance, but as I say, beyond stating that it is my own personal opinion I think that other people perhaps have more background than I to discuss the morality, all I have is the strong personal feeling.

-Dean Kingsley, I think it would be extremely helpful to this

35:00 - committee if one of the law schools could make a study of the cost of these appeals and a comparison between the abolition and capital punishment states, and also the length and expense of trials in capital cases.

-I agree with you I think that would be a useful bit of information, we'd like some information for the attorney general's committee and then felt that some other subjects

35:30 - were perhaps more important in the rather limited time before the end of the year. Do you have any other questions senators Bush? senator-elect Fisher? Dean Kingsley, thank you very much for appearing before the committee and we appreciate your views. Thank you. I'm pleased that we have Judge Neely judge of the superior court. Judge Neely.

36:00 - The committee appreciates very much your taking away from a busy court to be here with us this morning.

-Mr. Farm delighted to be here, may I make one comment before I start on my regular remark? with respect to the question that was asked of Dean Kingsley. I don't think that the additional expense is too great other than I believe that always in a selection of a trial jury by the possibility of the death penalty

36:30 - exists there is a much longer time taken on the badar examination to try in endeavor in the ascertain the attitudes of the prospective jurors. But in most cases of large import such as murder, even though the death penalty is not involved there is generally a daily transcript of the proceedings for the assistance of both counsel and I think that would

37:00 - continue just the same even though the death penalty were done away with I don't think the expense for the material would change. May I say that I am judge William B. Neely of the superior court and just as a little background I want to say that I have had experience as a prosecutor in the state of Colorado as well as many years of defense of criminal cases in the public defender office, for the record I'd also like to have it show that

37:30 - I was a member of the California crime commission on criminal law and procedure in which I was a member of until the time of my appointment to the bench, and we study criminal law and procedure throughout the state holding hearings north and south on many occasions to determine what legislation should be recommended in respect to the death penalty very thoroughly the

38:00- criminal law and procedure. Dean Kinglsey has covered, I think very thoroughly academic side the thing I have decided long years of experience in the trial criminal cases and I would like to have it car that my opinion is not matters I have arrived at since I was invited to appear before this committee

38:30 - I have been shocked in the past with the fact that young men who we sometimes called boys, but young men who are inexperienced are the ones that likely to the time of their experience what they have done for example the

39:00 - death on the commission or a robbery inexperienced young people who have been contrite and who have frankly stated their involvement are the ones that get the death penalty because a jury sits there without any doubt whatsoever as to the involvement of the defendant and it's much easier, then, to impose the death penalty than it is in a case in which a person who is

39:30 - littered in criminal ways when he's arrested he tells the law enforcement agency to prove it and he keeps his mouth shut and just because of that scintilla of doubt that may remain with the jury they are more likely to impose the punishment of life imprisonment, and I've had several experiences in which death was imposed on a young person who I felt his very contrition over the terrible thing that he had done was the thing that caused him to

40:00 - acknowledge his full participation and without that he would have never been executed, because the jury would have probably imposed life imprisonment. We know that this is a fact that the so-called gangland killing is the one that is most difficult to solve and they constitute the greatest percentage of cases that are not solved, I know, I'm thinking particularly the Tony Broncoto and the Tony Trambino case out here on Sunset Boulevard, you'll notice a black character,

40:33 - and the probabilities are that those are the whoever killed those people are probably the ones that the death penalty was designed for, the paid professional killer type but unfortunately they're not generally the persons who are before our courts facing before the prison board or before the governor after a conviction and in position of the death penalty now I'm convinced in my own mind that

41:00 - this so-called deterrent of the existing death penalty does not exist. Now I'm perfectly mindful of the fact that it would be almost impossible to prove that it doesn't exist because we have no way of knowing how many people who have murder in their hearts, who have been deterred because they faced the possibility of execution. But, I predicate my opinion on this that I don't believe that many people who commit murder

41:30 - ever think of what the consequences will be, in other words, if it's a murder of passion, it comes about because of a combination of circumstances that may never be repeated again, and as a basis for my opinion that I don't believe that it serves and any deterrent is this that at one time I had to compile for statistical reasons a record of approximately how many persons charged with murder I had represented and it was over

42:00 - 300 and I don't remember a single one of them who as an abstract proposition did not take the position that if he had to choose between death by execution and life imprisonment, he would prefer death, in other words, I think even among us here if any of us faced abstractly, I'm not talking as tough it is right for us here to decide but as an abstract proposition looking forward to the possibility of

42:30 - 15-20 years in prison or maybe a lifetime in prison is contrasted with a quick ending of it all through execution, I think that many of us would probably say we would prefer to be executed rather than to go through the trials of a long prison sentence. Now I'm not saying that if I was faced definitely with that decision right now whether you should die tomorrow or whether I live that I would change my mind but im talking about this decision from the standpoint of a deterrent from a crime

-may I ask you this judge then, why do they appeal these decisions that impose the death penalty if they rather die than to serve a life sentence?

-that's the very reason I made the distinction said as a deterrent they do not evaluate life as contrasted with death, but when it become a point of decision whether I die tomorrow, or rather I live

43:30 - after tomorrow then it's altogether a different situation but the only way we can to my mind justify the death penalty is if to the man who doesn't face that choice of life and death, does it deter him from a course of action which he otherwise would take in other words does he say, "I will not kill this person because I know that I might die".

- Judge your time and place is now in the position of the man faced with the immediate situation that brings up let's say a homicide

- That's right

44:00 - and if we place ourselves in the position it does not act as a deterrent anymore

-and that's what I mean, and that's the only place it can act a deterrent on society in other words whether we don't want to die after we've committed the homicide isn't an issue the question is: does the fact that we might for committing murder, stop us from committing that murder? and I think that's the real test on whether that good or whether it bad

- judge let me ask you this question talking about deterrence here,

44:30 - do you know of anyone that is in favor of the death penalty that does advocate that it constitutes as a deterrent?

- oh yes many of them say that the existence of the possible death penalty is a great deterrent to murder. You can read many articles in which they say that and they attempt to prove that when the death penalty has been repealed, the incidence of murder increased

- do you know of any prominent official in California that maintains that?

-I don't know of anyone right now I think that some of our

45:00 - local law enforcement agencies that have advocated that but I wouldn't want to speak for them, let them speak for themselves.

-Another thing that I would like to comment on is this, that in those that have been charged with murder with whom I've had intimate contacts either as a judge or as an attorney. I have found that, percentage-wise, their criminal

45:30 - activities have been very limited in other words most of those who have committed homicide, have done so because of a combination of emotional stresses, or because of their relative inexperience in crime, if you want to call it that, the trained burglar, the trained robber, the fella who's made a business of it, he isn't going to kill anybody because he has evaluated all of these things, it's the young and the inexperienced burglar who when he faces detection or possible arrest is likely to

46:00 - lose his sense of judgment and a homicide results. In other words, I think that generally true and I remember reading warden laws 20 thousand in Sing Sing, in which he points out that the most reliable and the most reputable prisoners in his experience were those who were there convicted of murder, and would say the same thing, I made this comment that if I were compelled to live with any class of criminal burglars or robbers or bunco people

46:30 - and so on. I think that as a class the ones who have been before the court on a charge of murder represent the highest class. The question was asked of dean Kingsley about whether there

have been cases of innocent persons executed. I don't think there are too many of those instances because generally speaking when persons executed that ends the investigation, but we do have and we read in our papers of instances from time to time in which it has occurred.

47:00 - I remember one in this county in which the public defenders' office did not represent this man, but he was convicted of murder and he got life imprisonment. Mr. Cuff, who I see is in the courtroom and myself, we had information which indicated to us that the man was innocent and we channeled it to his attorney. We didn't believe that it was properly used when the man was convicted of murder and Mr. Cuff and I personally worked on that case in our odd hours for some two hours and we were able to prove conclusively

47:30 - that he was innocent, and he was afterwards pardoned. Now, had that man been executed of course we wouldn't have gone on to work on the case, and certainly, nothing we could have done would have been of any help to him. I cite that as a personal instance which indicates that undoubtedly in other areas of crime there are mistakes of justice and of course where there is execution there is no real incentive to continue to try to right a wrong.

48:00 - Another thing that I think is difficult under the law as it now stands is this, that we put judges in a most difficult position, as an attorney I did, and as a judge, I have been placed in that position. You know, a judge can never commit himself as to what he will do in a certain case, and yet, we know that it is a common practice of the district attorney and the defense counsel and the district attorney feels that a certain case

48:30 - doesn't want the imposition of the death verdict to say to counsel, "I'll be glad to go in and talk with the judge with you about this case, because I don't think it merits a death penalty and if we could talk it over with him and if he's willing to, if he agrees with us, why then, we could plead guilty and impose a death penalty". Well, a judge hates to commit himself because he has to take evidence on the degree, and yet he puts the defense counsel and the district attorney in a difficult position. They take an action

49:00 - in which they evaluate the attitude which he has indicated, but which he has not bound himself to follow and they may put their client in a position where the judge doesn't follow out his original indication because of the fact that other elements may be developed could cause him to change his mind. I know one particular instance in which in this county, two persons were charged with murder, the one who was less involved

49:30 - and who had had no criminal background and who went in and pleaded guilty before this judge and had the death penalty imposed and it was carried out, the man who hired him to commit the crime and who was the husband of the woman that was murdered went to trial and

got life imprisonment, I always felt that it was one of the most tragic cases of miscarriage of justice possible, what case was that judge Neely? I do not like to name the case, alright, I can

50:00 - tell you that it was known as the famous "dimes murder case" in Los Angeles criminal history. I feel another thing about this, I commented on the fact that most of those that I have represented and that have been before me, charged with murder are those who have no considerable criminal background most of them no criminal background, so I have said on many occasions that if society is justified

50:30 - in exacting a life of any person then certainly it is not justifiable under the so-called rule of an eye for an eye but we execute the wrong people. I have many times felt that the person who begins as a juvenile delinquent then graduates into petty theft, then grand theft, then robbery, and rape and all of the other things, and we have those people, undoubtedly we have, you all know that. If

51:00 - society is justified in saying that this person does not have the right to live anymore, then I'm of the opinion that those are the ones who should be executed, rather than the person who in a fit of emotion or in the panic of being apprehended in a robbery takes a human life. I think we execute the wrong people if execution is proper

-You mean we don't execute the right people sometimes

-Well maybe that's

51:30 - right. What was the name of this case you had down here judge about three years ago where the defendant had killed 11 people, and I think the last crime he committed involved about 11 years of age he stabbed him and committed acts of sodomy upon the boy. I believed he committed 11 murders what's his name? Was his name...Stephen Nash? Nash yeah, I remember that now do you think that a life like that should be preserved? I'm not saying

52:00 - that it should be destroyed I certainly believe that a person like that should never be released back on society. But, any of us can pick out the exception of case and prove anything. I can pick out cases of even petty theft where I could justify aside from a moral basis, from a legal basis the infliction of the death penalty, I think that unfortunately we are too frequently swayed by the exception of

52:30 - case, like the Nash case and the Chessman case, for example, they're the ones that hit the headlines and try to predicate a rule on it. And, I think that in the Chessman a thorough study of that case would indicate why it's been before our courts so long, because I, in the beginning of that case, had something to do with it and I think that the unfortunate thing is that it may lead to legislation which will

53:00- stop future Chessman cases but which may, on the other hand, will produce injustices, and I heard the question that prepeded to dean Kingsly about a year, I would say to you this let me suppose you did impose a year's limitation as a matter of statute law and somebody's execution hadn't taken place within the year and some factor developed more than a year and after the statute of limitations had run out which was of substantial merit,

53:30 - is there anyone here who would suggest that because we'd impose the statute of limitations in which that matter could be heard that society would be justified in taking that life even though a substantial point has been raised after one year I don't think we can, and I don't think we can assume that these points that are being considered are not substantial

-Of course we have statute of limitations that apply to all kinds of actions that might be a lot of merit in many actions that are barred by the statute.

-That's right and that's

54:00 take the statute of limitations ensued on a note, for example, that is for the benefit of all society there's no question about it. That you have a right if you don't exercise it between the statutory limits you shouldn't have that right because otherwise you and I would have to keep our receipts, our canceled checks for life but in the area of death it's a pretty final thing and I would be most reluctant to see too short a statute of limitations imposed

54:30 - on a time with which a person could raise a valid point as to whether or not he should be executed.

-Senator-elect Fisher do you have any questions? No. Well, Judge Neely we appreciate very, very much you're taking your time away from your busy court to be here and for expressing your views to the committee.

-I'm grateful for you fitting me into your schedule. Thank you very much.

-We're gonna call a brief 5-minute recess.

55:00 - I would like to call Mr. Reverend Ray Ragsdail superintendent of the Methodist Church of Los Angeles.

55:30 - Thank you, sir, pleased to have you here and would you identify yourself for the record? Yes, I am ray Ragsdale the superintendent of the Los Angeles district of the Methodist Church I am representing the Methodist Church of Southern California which is made up of approximately 350 Churches and approximately

56:00 - 175,000 members the Methodist Church has gone on record a good many times with regard to the abolition of capital punishment I would like to read into the record, the statement

that was adopted by the southern California Arizona conference of the Methodist Church on June 16, 1955, in which has since been reinstated or rather

56:30 - reaffirmed, on a number of occasions this is the text of the resolution because we are deeply concerned at the increase in the application of the death penalty in California for capital crimes and because we deplore the violation of the moral law "thou shalt not kill". And, the sacred obligation to be redemptive instruments rather than avengers because the death penalty has been executed upon the friendless

57:00 - the impoverished and the defective and rarely upon the wealthy and influential thus being discriminatory because in numerous studies in psychology and criminology the death penalty has been shown to be no deterrent to capital crime. Because the trend in America lies in the diminishing use of the death penalty 27 states either having abolished or refrained from its use in the last 5 years because the risk is always present that we may take the life of an

57:30 - innocent man and because we stand in discipleship and loyalty to our Lord who was himself an innocent victim of capital punishment. Therefore, be it resolved, that we stand for the abolition of capital punishment in the state California requesting our legislators to work without rest to this end. And our Laymon administers to soul communicate this conviction to their assemblymen and senators. As I said this has been

58:00 - reaffirmed on several occasion and I would like to indicate too that the Methodist Church at large representing some 9 Million members nationally has recorded itself in opposition to capital punishment and the Methodist social creed which was reaffirmed in the most recent general conference of the Methodist Church in 1956, as follows: "We stand for the

58:30 - application of the redemptive principle to the treatment of offenders against the law to reform of penal and correctional methods and to criminal court procedure, for this reason, we deplore the use of capital punishment". Of course, I speak primarily from the point of view of the moral aspects of this particular issue. I believe that the taking of human life whether by an individual or in the name of the state

59:00 - denies the sanctity of human life, a legal killing by the state only compounds the immorality of an illegal killing by an individual. In one sense legalized killing is morally worse than murder for murder is seldom accompanied by the deliberately planned execution of an individual after formal trial months of incarceration and meticulous attention to the means of death

59:30 - moreover murder, when performed by the state, is even more fearful because it then masquerades as justice it clothes the taking of human life with respectability. When individuals

give the state the power to take human life they are granting to them power which they morally deny themselves. It is this power to which extended makes the gas chamber at San Quentin into the gas chamber at Deck Hall. The death penalty is immoral because

01:00:00 it is motivated by vengeance so although dressed in the language of deterrence the rationalizations for the death penalty are quickly reduced to a plea to do away to those committing heinous crimes, in its simplest terms this in as appeal for vengeance. I believe that capital punishment is barbaric and inhumane and immoral it is as incompatible with this enlightened and advanced civilization in which we are

01:00:30 - probing outer space as the witch-doctor treatment of illness. I believe that we must always take the redemptive approach when dealing with criminals and we must never give up hope of being able to reclaim and redeem and individual. Therefore, I would like to put myself on record and indicate that I have the backing of the Methodist Church in saying that we are opposed to capital punishment.

01:01:00 - Reverend Ragsdale, Any questions senator Bush?

-I would like to just go a little bit farther on the statement which deems capital punishment as barbaric, are you opposed to killing anyone or more?

-Is this to remain to this discussion, sir?

-Well, I just want to find out what your...

-You want my own personal opinion? Yes. Yes.

-You are opposed to that.

- Yes, sir.

-Do you have any questions senator-elect Fisher?

01:01:30 - I understand your statement you consider redemption whether it be moral or really from the standpoint of depravity of an individual in our society is the essence of civilization?

-Yes, sir, I believe civilization is built on the sanctity of human life

01:02:00 - and of human personality, therefore, no man has the right to take the life of another man whether is it the state or an individual

-By war or by execution.

-Right.

-Thank you very much, Reverend Ragsdale, appreciate you being here.

-The next one I'd like to call is Chief William Parker, Chief of police of Los Angeles. Appreciate you taking your time Chief Parker I know how busy you are.

-Thank you, senator, really

01:02:30 - to be asked to come before this committee, and contribute whatever I might, to my special capacity and personally to your determination. First, I would like to say that I am on fashion of attempting to either state or impose a personal opinion in this matter in this up on this committee or the legislature. I shall attempt to

01:03:00 - deal with it from the standpoint of facts and as unemotionally as I can. first I would like to run the risk of invading a field in which I am not skilled but I think it is necessary that something be cleared up here, and that's the theological field. If this is a moral question and if it is the determination of the people of the state of California

01:03:30 - that it is an immoral thing, to execute a person for certain described crimes after due process. Well then all of the other considerations I believe are unimportant, because I do not believe that there are degrees of morality and if the people of this state decide that it's basically immoral to execute criminals under any circumstances, then I think the discussion should be closed at that point. However,

1:04:00 - I'm informed and I believe correctly that there is a great amount of weight of theological opinion going back to the book of exodus, that society has the same moral right to defend itself as an individual does and if in that defense it is deemed necessary in the best judgment of that society that an individual be executed

01:04:30 - after full recognition of the rights of that individual that is not an immoral act upon the State. Now once again this is not my opinion it certainly but I believe that you will find great theological weight behind that premise alright we could move on from the question of morality and I believe once again they must be separated on the moral question before you seek the other

01:05:00 - factors

- Excuse me Chief would you mind repeating there is great weight behind the premise, I didn't follow

- well there is the theological opinion and has been through the centuries that the state has the right of self-defense, just as an individual has the right of self-defense and that right and that right of self-defense if it is deemed necessary by the state includes the right to execute criminals after full recognition of their individual

01:05:30 - rights to trial and process. Terrific, I believe if we can move on from the question of the morals involved, but first, we've got strip this question of its emotional appeal as we do I think all of the big problems that face our society there I too much emotionalism added in the considerations and

01:06:00 - determinations of our big issues. We have a criminal problem in America as well as other parts of the world. We have a system of finality that may or may not be effective obviously, it on the ... but I believe that there are three fascists basically to the philosophy of the present system of finality which is utilized in

01:06:30 - most of the civilized nations of the world. First, one of punishment and I don't believe you can escape it, we get back to this cliché if you will of the man paying his debt to society. People are punished for offenses they commit against the social order. A second facet the philosophy underlying our theological system

01:07:00 - is one of deterring not only the person punished but other persons who may be possessed to proclivities that would stimulate them to emulate the criminal conduct of the person meeting front, to deter them from exercising their criminal desires. We have a third and important facet to this underlying philosophy that deals with

01:07:30 - either on a temporary or permanent basis taking the individual out of the social unit so that he can no longer prey upon it during the period to which he is separated from it. Well, that is not new in history, you can go back to the day where the criminals were thrown outside the walls and not allowed to re-enter the city in order to separate them from this source. I believe that, of course, included in this third facet is the question of

01:08:00 - rehabilitation, because I believe it is a sub-topic of this third facet in that the question of rehabilitation has a great deal to do with determining if at all the extent to which the person shall be separated from the social unit from a standpoint of chronology. Now obviously, a person who has been executed for the commission of a crime is permanently separated from the social unit. So that

01:08:30 - in addition to the question of punishment, in addition to the question of example, you have the question of separation from the unit upon which you predicate the basis of self-defense and I shall be specific of a few selective murder cases as to why this should be important.

01:09:00 - we will take the case first James Burchiel bound and gagged of a thirteen-year-old girl, threw her on the floorboard of his car and a police officer observed his wild driving and while trying to apprehend him was shot and killed by Burchiel he was a fugitive

01:09:30 - for two years, then he was arrested in Pennsylvania for another murder on October the 5th 1918 he preferred to stay in Pennsylvania because they did not have the death penalty he took a twenty-year sentence rather than to be extradited to California where the death penalty could be applied he eventually after his releases from the Pennsylvania penitentiary was brought to Los Angeles was tried and convicted and died while

01:10:00 - Folsom prison in 1946 while serving a life sentence. Next, the case of Louise Pete in May of 1920, she rented a house in Los Angeles from an elderly and wealthy Jacob Dent he retained a room in the place. During June of 1920 he disappeared and September of that year he was found buried in the basement with a bullet hole in the back of his head. Ms. Pette forged several checks of his, she had also represented herself to merchants as his wife. She was convicted of

01:10:30 - first-degree murder and it is believed that her sex alone at that time saved her from the death penalty. During the time she was being tried for murder her young daughter was placed in the hands of a kind-hearted woman by the name of Margorate Logan. Ms. Pete was paroled in 1939 and in 1944 she was found to have murdered her benefactor Magorate Logan and for that crime she was convicted of first-degree murder. I might suggest as we go along that you

01:11:00 - give some consideration to this rather what I would choose to call "loose-talk" about life imprisonment without possibility of parole because I don't think that the facts will bear out that has been practiced and I'll get to one of those cases it might also be pointed in the Pete case that two of her husbands committed suicide, she was executed in San Quentin penitentiary in 1947 and permanently removed from the social unit. On October 1,

01:11:030 - 1931 Mr. Nathan Black was shot and killed by a man identified as Emmitt Raymond Perkins. He was arrested but because of a weakness in the anatomical, for reasons that we believe we know it was not possible to convict him. But he was later convicted of the murder of Anette McHanson near Nevada City California, on or about the December the 29th, 1951. He was also identified as one of the

01:12:00- perpetrators of the murder of Gaurd Young on October the 10th, 1952 near Chester California, Youngs two little daughters and Micheal Sail, their playmate, were also brutally murdered at that time. On March the 9th, 1953 Perkins was one of several thugs who beat to death Mrs. Mable Monoham. And then later when it was discovered that one of the accomplices, given his story to the district attorney, Emmitt Perkins was identified as one of the kidnapers and, we believe, murderer of

01:12:30 - Baxter Shorter. So after a criminal career of 30 years during which time he was arrested 35 times and all of those were felonies except 4, and killing not less than 8 people. He was executed in 1955. Take the case of Dwayne K. Martin, he started his criminal career in Wakefield Texas in 1932, he killed his father in June 30th, 1935 in Dallas Texas. He was a juvenile at that time and the disposition is not

01:13:00 - clear as to what occurred to the case, but he was pulling armed robberies in Los Angeles by 1939, 7 years later. January the 18th, 1939 he shot Abraham Fox in the back twice while Fox was resisting a robbery, and Martin then stole a taxi cab to get away. He was convicted of first-degree murder, first-degree robbery, and grand theft. The sentences were life, five to life, and one to ten consecutive and he was now free on a resident in the city of Los Angeles. On February the 2nd,

01:13:30 - 1939

-Excuse me Chief I don't want to cut you down, how many of those do you have? I have about 8,9,10

- Would you like to select the ones that you

- well, I'll get to this one and

-We ought to listen to them all though, I think that I have some of the people here listening to him too.

-Well, I don't want to cut him down.

-Well, these are the facts of life, I mean, these are the things I think the committee should be considering, and not just emotional statements, without the

01:14:00 - identification of face.

- Mr. Chairman I'd like to have him read all of them

-Because these are the things that I have seen from the police officers standpoint, now the next one...what is the decision of the committee?

-No, it's fine Chief you can read them

-Alright, on February 2nd, 1939 Lila Clara Simmons was found dead in a hotel room, her face was battered in, she had been gagged and strangled with her own lingerie, and she had been robbed and Alex

01:14:30 - Barnei who had been bar hopping with her the previous evening was charged with the crime. He requested a court trial where within the jury was found guilty of first-degree murder. He stood up in court and requested a new trial by jury, the judge denied this stating the jury would give him the death penalty. He was then sentenced to life without the possibility of parole. He was paroled in 1952 and on December the 7th, 1953 he pulled an identical job and killed a woman in San Francisco. Now there is an excellent example of this so called life

01:15:00 - "imprisonment without the possibility of parole", as it works in California. The next one is Floyd H. Hunt

-Pardon me chief, do you contend that now there is a law in California that says there is life imprisonment without the possibility of parole?

-Well, that's the sentence this man got! By the court

-He didn't get life imprisonment without the possibility of parole, none of these go

-He was sentenced to life without the possibility of parole, and he was paroled in 1952

-How long was he in Chief?

-Well he committed that murder in '39 so within 13 years he was

01:15:30 - out, and then at the year later he killed another woman in San Francisco

- Chair your contention to each one of these it was the judgment of the court that there be no possibility of parole or?

- No, I only contended that in this one case that that was the sentence however they can keep them in under the determined sentence much if they wish because many of these people have been kept in. You and I will never live long enough to determine if there does become such a thing as life imprisonment without the possibility of parole

01:16:00 - as to whether or not it works. And I'd like to address myself to this moratorium A bit later in that connection because moratorium will never prove itself and then the persons involved will never be out within the moratorium don't presume if they do 7 or 8 eight years. This next one is Floyd H. Hunt on October the 16th, 1957 after a quarrel with his wife because of his excessive drinking. He borrowed a shotgun from a friend to go hunting and early that evening

01:16:30 - he shot his wife in the face, killed her and left his 3 children motherless. He went to San Quentin for murder but he was paroled in 1946 on February the 19th. His second wife Mildred was an employee at a school cafeteria she left him because she feared him. On October the 25th, 1955 one month after the separation he appeared at her place of employment shot her to death and then committed suicide. The next one is

01:17:00 - James Raymond Harris, on July the 9th, 1940 in San Luis Obispo an eight-year-old girl Gail Jone was found unconscious she was beaten with a six-inch rock and criminally assaulted. James Raymond Harris was arrested, he confessed and after doing time in various state hospitals, and pulling at least one escape he was sentenced to San Quentin for life but he was back in the street in 1954. And on April the 8th 1958, he was charged with the Murder of Birtha Lipson in Los Angeles, Birtha was found in her office clothes in disarray

01:17:30- and suggestively a piece of wire twisted around her throat, a sheet bearing Harris' name had been removed from a scratch pad in the house. Now we did not get a conviction in that case but that was because of some technical problems and as far as all the other authorities are concerned we believe he committed that crime. So he was sent back for parole violations. So he went back to the penitentiary. Robert Allen Vovo started his criminal career in 1931, he has been in and out of jail

- 01:18:00- and penitentiary most of his life since then. His records show 23 arrests all for felonies. On September the 1st, 1945 while on parole, he threw Marie Barnes out a third-floor

window, killing her. He was paroled again in 1952. Exactly 30 days after his release, he killed Ralphsy Manuel, with a knife there were nine stab wounds in Manuel's wife who tried to protect her husband. He charged Manuel to have had cheated him with dice. The jury found him

01:18:30 - guilty of murder on the first degree the penalty was fixed at death but the judge modified the sentence to life. The next one is Thomas E. Perbis, he shot and killed his wife Eleanor Hopelin March the 9th, 1950 by using a shotgun, he was sentenced to San Quentin for five to life and he was paroled on September the 27th, 1954, four years later. And, on December 19, 1957, he used a pistol to shoot and kill Mrs. Hazel Wilson, the mother of three children,

01:19:00- and he's now awaiting execution. The next one is Richard John Jenson, in his first murder, he succeeded in his first murder but he failed in the second attempt. The first one, he was a graduate of Francine Allen school for boys in Wydyer by the time he was 14. A playmate Billy Williams, 15, called Jenson an "ex-con," this was in 1939 in Locra California

01:19:30 - and Jenson beat him to death with a hammer, stabbed him with a butcher knife, and strangled him. Jenson did several years in various state hospitals, and October the 3rd, 1953, a 21-year-old serviceman Mariam Alpiiper was hitchhiking near San Fernando California. Picked up by Jenson who had previously prepared the car by having a cocked, trap gun in it, aimed at the back right front seat. And on the old ridge route, not far from *** Jenson triggered the rifle causing Piper to be shot in the head. He then beat the victim on the head with a hammer,

- 01:20:00 - Piper didn't die so Jenson shot him with the shotgun. Still living, but helpless this man was completely stripped and robbed. A sodomy attempt was made after which he was thrown over the shoulder of the road dirt was shoveled on his naked torso after which Jenson drove away leaving piper presumably dead, but Piper survived to the point, to have been able to testify against him, and this man was sentenced to death. Those are a few select cases to dedicate what may happen when a person is or is not permanently removed from society

01:20:30 - after haven established a certain course of conduct.

-Chief with the respect of those cases would you say that the deterrent, the fact that we have a death penalty in California, had any effect on the cases that you were in? -The deterrent on the *** is quite obvious when the person is executed, they've never been known to come back and kill again, and I'm not trying to be facetious when I say that.

-Well, you're talking now about "removal", not the "deterrent".

-I'm back to that question of permanent removal from the social unit so that because of the proclivities that they have evidence and because of the processing through the trial in society of the

01:21:00 - present time determines that in self-defense they are going to remove this person through execution.

-Well, now you're talking about the third element you presented to us, "removal." I think the question is, and I'd like to hear your answer, as to whether you think the fact we have a death sentence was a deterrent in any of these persons.

-Well first may I say that I have not researched the subject from the standpoint of gathering comparative data, we believe that in our activity, that definitely, the death

01:21:30 - penalty is a deterrent. Now there may be considerable evidence that can be used to establish in some areas that does not appear to be so. I think you might have a very close look at the experiment in England, at the present time, where they have a moratorium, but then my understanding is there has been a frightening increase in homicides, in England since they have instituted this moratorium on the death penalty. But I don't want to make that as a positive statement because I think it's subject to

01:22:00 - determination by the committee, and something to research by the committee. Once again, would like to repeat that I think you should look at the facts, and not some of the emotional things that are being done at the present time like the picture "I want to live" which is a fraud upon the American public and apparently designed to stir up great emotional reaction in connection with this subject matter.

-Well chief I would consider some of the things you read to have some emotional

01:22:30 - content but the question I am wanting to know

- well I guess it depends on how you're involved

- but the question I'm wanting to know, the question I'm wanting to have answered, is whether or not the individual in the cases which you have read you felt that the presence or absence of the death penalty in our statues was a deterrent, I'm not quarreling with you about removal. Well as far as these persons are concerned, well I think that quite obviously answers itself doesn't it?

- Well then you

01:23:00 - do put the main burden of your argument on the question of removal

- well I'm not arguing anything and I did not come here to argue I came here at your invitation to give you some information and I'm not interested enough in this subject to make a debate out of it

- removal and is the main burden of these particular cases, you feel that removal is the thing that we should be concerned with here?

- I don't say that I'm merely pointing out, I told you I will not express a personal opinion here, I have enough problems as it is without getting into these other fields,

01:23:30 - after all we are the arresting agency, not the punishing agency. Our job is to bring criminals in, when we find they aren't criminals, attempt to gather the evidence, and gather the district attorney. Now it is discouraging, sometimes, to see the people back down again in this job. But it isn't our job to tell the state of California how they should punish these people that's the state's problem and I don't want to express any personal opinions here at all in connection with this subject.

- Chief, I have a statement here I wonder if you would care to make a

01:24:00 - comment this comes out of the office of the governor of Michigan and this is a quote, this was researched by their director of corrections, in view of the statement that you have just made, and Michigan by the way is an abolition state. "In the 23-year period which has elapsed since 1937, 103 persons who were serving life sentences for first-degree murder have had their sentence commuted have been released on parole, only 3 of those persons have been

01:24:30 - returned none for the commission of additional homicides, they served an average term or imprisonment of 22.6 years."

- Well, that sounds like some data that the committee should consider, but I am not in a position to indicate how they elect their parolees, whether they keep people in without possibility of parole, whether they let them back out such as some of these people were. Maybe they're highly selective in who they release. All of this data is subject to

01:25:00 - careful study but I'm not in a position to analyze it because I've never seen it before. Chief I'd like to ask you a question, judge Neely commented, you'd certainly had experience in this field, he commented that the number of murder cases that have been tried in his court he found that so many times that the person who received a first-degree murder and the death penalty was a person that was inexperienced in crime and that so many times, the persons who were experienced in crime, the mobster, the gangster, the

01:25:30- smart criminal escaped. Now do you think that, from your standpoint

-well I think that for a judge to come in here and make those statements without putting the specific data before the committee is subject to challenge because that's a generalization, I would want him to be specific. And state which criminals he's talking about as I have here, but anyone could make a general statement then what does it mean? That's why I said earlier the committee should study the detailed data and not just take general statements from

01:26:00 - me or anyone else. Chief, what comment would have that in the general prison population in San Quentin, I think some of the cases read here this morning from director McGee and some others, would indicate that there are in the general population of San Quentin many people whose crimes have been as heinous or as dastardly as those who are awaiting execution

on death row and do you think that there is largely a matter, chance, or happenstance, some get on the row and some get in the general prison population? -

01:26:30 - Well, I think that we oughta look at that one for a minute because it bears some analysis. Actually, there are far more criminals at large in society today than there are in jails, and on that general theory then all those in jail should be turned out on the basis that they're not all in there so why should we be partial? I mean, that's how much logic this thing makes -in other words you don't -and I wanna go a little further on this because let's find out who it is that's inflicting the death penalty

01:27:00 - on these people it is the jury system in this state that is making that determination now those people on juries are cross-sections of the community, they are not a law enforcement I'd imagine that law enforcement officers would have trouble getting on one of those juries. And since the fabricated penalty, which I think was designed by those responses some of those at least to deter juries from imposing the death penalty. It would appear that

01:27:30 - society has, through its jury system, has actually imposed a greater percentage of death penalties in these cases in these cases than were imposed before the jury had to make a positive finding. Now, to rationalize the situation on the basis that because all criminals aren't punished that none should be punished and that's about how basic this is- is something that defeats any concept of knowledge that I have.

01:28:00 - Well I can't agree with you that -Well, fortunately for America, we are all allowed to take positions and express them and that's probably what distinguishes this country from all others. And that applies to policemen too, I think they're entitled to express their opinions. I'll tell you it's extremely difficult for police officers to remain unemotional in these situations and we must do it. I was talking to a distinguished lawyer about this last night and a man who has been on the

01:28:30-opposite side of many questions that I have debated and I thought of separating the emotional attitude towards the professional. Now it's very difficult for me to do in the receiving hospital as I have twice in the last three months and see fine officers with bullet wounds through them, and be unemotional about this I was there the other day not long ago here's a 32-year-old policeman, celebrated his 32nd birthday and his

01:29:00 - single baby, child's, daughter's second birthday and there he is with her, and he had nine bullet holes in him ambushed by two homeless men. We have to remain totally unemotional, we can't afford to become emotional in these situations, you could imagine the personal reaction among his buddies. And I think that maybe the whole state could emulate the

police in that regard, and remain totally unemotional in these situations and analyze them. It's awfully difficult

01:29:30 - for me, a man who stood as did, and these are mere facts, and look that 90% of the fifth invasion plowed over one cemetery and all those boys were sent there by you and I, when we ordered them to war without any permission from them whatsoever, knowing that many of the would have to die. What was their crime? Serving their country. It's hard for me to become emotionally stirred up over men like Nash, and men like Perkins, and men like Santos.

01:30:00 - And this man who is being tried in San Diego who killed these three models, and has a ritual in which he ties, in which you could see the frightened eyes in the pictures he took of his victims. in the stages of these sadistic killings. It would be awfully hard to get very model and sentimental about those individuals but nevertheless regardless of sentiment, if we have any left, we must approach these things from a factual professional standpoint. And

01:30:30 - I would subscribe, hope that the whole state will subscribe with that attitude. And whatever the people wanna do, that's our problem in law enforcement too many people think we are trying to tell the people how to run their state. All we're trying to do is tell them what's going on so they can make their own determination.

-Chief wouldn't you say there's quite a bit of emotionalism on the law enforcement side as well as on the side of the

- I didn't say there was, I said there's room for it. It's awfully difficult to look at a fine young man whose only crime is

- 01:31:00 - protecting society laying there full of bullet holes then go out and flee for the life of the man who shot it. It's extremely difficult. But we don't attempt, we don't ask juries to impose death penalties, that's not our job. All we do is present the evidence and let the jury make up its own mind. Just as the legislature is going to make up its mind on this panel. Now the only thing I hope is that the legislature and the people are on the same opinion. Because if you could take the jury s a cross sectional of people I'm not quite so

01:31:30 - sure there is an area of total agreement, or even majority agreement in this situation. Nash is another good example he's a self-styled king of the killers he sat under that peer and philasected a ten-year-old boy with a penknife. And frankly I can't stir myself to become emotionally concerned with the final deposition of Mr. Nash. Now do you think that the fact that Mr. Nash that

01:32:00- the death penalty exists in California was any deterrent with respect to Stephen Nash? I've talked to Stephen Nash

- No I just got through saying that obviously these cases here indicate that the death penalty was not a deterrent of any of these people, and that's why, and I hope I haven't disturbed the committee, I went into this other facet of the basis for our present philosophy of penology one is to remove the individual from the state on a temporary or permanent basis. You can't ignore it, now what you're suggesting

01:32:30 - when you lift the death penalty is a substitute I assume of life sentence with possibility of parole which has never worked out in California, and at that same time if it doesn't work out then you are eliminating from the present system of criminal justice the permanent elimination of the individual from the social unit, by the execution route and whatever the outcome of that is society is willing to pay the price

01:33:00 - and I'll buy that I'll go along with you on that.

-Well chief following your logic, following your theory to a knowledgeable conclusion, then what about you have a number of cases here in Los Angeles and elsewhere where there have been attempts at murder where the victim has been badly injured probably permanently injured for the rest of his life, what about those persons, should they also be removed from society?

- well, if we have a permanent sentence of course and is designed to give great flexibility to the right

01:13:30 - authority to determine the duration of time that these people should be taken out of the social order after having been convicted, then we could get into the whole gambit of individual whether this man who was released after five years should have should have served ten, or this individual who was released after seven should have served twenty, or the individual who served twenty should have been released at the end of ten. We've got to deal with specifics because one generality begets another and I don't think one compensates another I think you're going to have to

- 01:34:00 - weigh the evidence you're going to have to weigh the result of what you do, you as the elected representatives of the people are going to have to decide whether, A. is it better not to execute the ...